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Page 279. Among those authorized to solemnize marriage, the leader of the Society of Ethical Culture in the city of New York is also designated.

THE GEOGRAPHY OF MARRIAGE

OR

LEGAL PERPLEXITIES OF WEDLOCK IN THE UNITED STATES

BY

WILLIAM L. SNYDER

NEW YORK AND LONDON
G. P. PUTNAM'S SONS
The Knickerbocker Press
1889

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1889

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PREFACE.

MARRIAGE involves all there is of domestic happiness. The subject, therefore, presents questions of the greatest moment and highest importance. The controversy which has arisen, as to the stability of marriage, the propriety of divorce, and the rules which should be established to govern the relation of husband and wife, has been absorbing public attention and is constantly growing in earnestness. Men and women throughout Christendom, entertaining all sorts of views on the subject, have contributed to the discussion. One extreme, voicing the dogmas of the Roman Catholic Church, is presented in the doctrine advanced by the American Primate, Cardinal Gibbons, declaring that no man and no legislation can validly dissolve the nuptial bond, and affirming that a divorced Catholic, who marries again during the lifetime of the innocent party, thereby excludes himself from the communion of the Church. The other extreme is reached by the attacks made upon the institution of marriage by speculative writers and theorists, like Mrs. Mona Caird and others, who challenge the

wisdom and propriety of monogamy, and declare that "the present form of marriage—exactly in proportion to its conformity with orthodox ideas—is a vexatious failure." As well curse the sunlight, and rail at the moon. The views of these extremists are supplemented by writers like Mr. Richard, who seeks in this age, near the dawn of the twentieth century, to bolster up the curse of polygamy, by arguments to prove that it is the form of marriage not only authorized but distinctly sanctioned by "the Almighty"; and the Marquis of Queensberry, who seriously objects to monogamy as a grievous error, and altogether a barbarous institution born of hypocrisy and bigotry.

Yet, strange as it may seem, the theories advanced by all these extremists, as well as by the more conservative element, are really practised in the United States. Extending between the two great oceans of the world, running from the tropics, far into the north, a portion of its territory extending even within the arctic circle, it contains a homogeneous people, dwelling peacefully and contentedly together, under half a hundred local governments, each with its own laws governing the marriage relation. In the various States comprising the geographical limits of the American Union, are to be found the radical and

diverse theories, advanced by the writers referred to, in practical operation. South Carolina refuses, for any reason, to allow the dissolution of the nuptial bond, and divorces there are altogether forbidden. In New York, the ground for divorce is virtually restricted to the crime of adultery; though, if one of the parties is sentenced to imprisonment for life, such party being civilly dead, the civil contract on that account is dissolved. In many States divorce is practically free. It may be granted for incompatibility of temper, or other light or trivial causes. In Utah, the system of monogamy is altogether ignored, and polygamy is practised, in spite, it is true, of the Act of Congress and the recorded protest of the American people. It is not necessary, therefore, to indulge in speculation, or conjecture as to results. Which of the American States has developed the highest degree of social happiness, and where does contentment, social order, and prosperity most abound?

The laws of marriage, therefore, in the American Union are determined by geographical position, and suggest the title of the book. In view, therefore, of the great variety of laws and the different rules of punishment prescribed, a mistake in geography in matrimonial affairs may prove serious.

These sovereign commonwealths in the Federal Union are welded and bound together like one State, by a perfect and comprehensive system of railways, and a great web of wires transmitting intelligence by means of electric currents. The population being all citizens of one government, while yet citizens of a particular State, using the modern conveniences of travel and communication, commingle constantly. Domestic difficulties arise, and by reason of change of residence, or a desire to appropriate the benefits of liberal laws prevailing in other States, conflicts of authority upon social questions are constantly arising. The evil results of this conflict are increasing. What is the remedy?

In the following pages I have endeavored to set forth briefly some of the facts connected with the subject, to show the lack of harmony existing; to call attention to the various laws as they exist; and to suggest what remedy, if any, is feasible.

WILLIAM L. SNYDER.

TEMPLE COURT,
New York, March, 1889.

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THE GEOGRAPHY OF MARRIAGE.

CHAPTER I.

THE GEOGRAPHY OF MARRIAGE.

"How irksome is this music to my heart!
When such strings jar, what hope of harmony."

SHAKESPEARE.

OWING to the variety and diversity of the laws of marriage and divorce in various states and countries, the questions touching the integrity of the domestic relations—rights of inheritance, problems of legitimacy, and controversies involving the essentials which lie at the foundation of social order,—these important inquiries are made to turn largely upon questions of geography. The family is older than the state, and ranks first in importance, since the welfare and stability of civil government depends upon the honor, the purity, and the sacredness of home.

What legislation, therefore, is more important than that which affects the social status of the individual? Yet this legislation differs so radically in our own land and among other governments, that the questions concerning it, in a given instance, must

be regarded with respect to geographical boundaries, and are narrowed, primarily, to the investigation of the particular law of a particular place.

Independent, therefore, of matters of sentiment—love, devotion, affection, romance,—and kindred metaphysical and psychological subjects which writers of fiction and authors of the drama, the poet and the painter, love to dwell upon in connection with the subject of marriage and divorce, there are practical questions continually arising, upon the solution of which the welfare of the individual and the common interests of society depend.

Marriage operates as a revolution, because it not only changes the social condition of the contracting parties, and creates new property rights and obligations, but prospectively it regards the destiny of offspring and rights of inheritance of paramount importance. The civil status and property rights which attach to the condition of matrimony are therefore of absorbing interest and of more than ordinary importance.

This interest, as has been observed, is universal. The subject concerns those who are unmarried; for, in the ordinary course of events, it is natural to presume that the maid and the bachelor will sooner or later take a personal and immediate interest in matrimony, as a condition and estate upon which they will themselves enter. After the obligations of wedlock have been assumed, this interest continues, in view of the fact that with the celebration

of the nuptials new rights and duties arise touching the community of interest as to fortune and estate created by the marriage. The children, likewise, who form part of the household, whose domestic happiness and matrimonial alliances, prudent and loving parents regard with fond solicitude, create likewise a fresh interest in the subject, because children, even, may marry and be given in marriage. Questions, also, as to the right of inheritance are frequently presented which involve in their solution the validity of matrimonial alliances contracted under peculiar, perhaps romantic circumstances, in states or countries where the marriage laws differ materially from those in which the property which is the subject of controversy is situated, or in whose tribunals the legal problems are discussed. They frequently develop striking dramatic incidents and novel situations touching family secrets and family honor. They are often complicated with claims of repeated marriages, about which cluster the results of loose and inconsistent divorce laws, revealing consequences which cast a gloom and bitterness upon blighted lives and ruined homes.

It is a remarkable fact that, notwithstanding the vital importance which attaches to the marriage contract, the rules of law which govern it are conflicting and contradictory, and lack uniformity and harmony to a degree unknown in connection with any other species of contract. Every country, every state, in view of its political sovereignty, prescribes the rules

which shall prevail within its borders, as to social order and domestic life. The law of marriage in England differs radically from that which prevails in Scotland, and both differ in detail from that which prevails in Ireland. In the United States every State and every Territory enacts its own peculiar code of laws on the subject of marriage and divorce, and these are so varied and diverse as to give rise to a seeming interminable jumble and complication. The many systems which prevail in thirty-eight States, nine Territories, and the District of Columbia, embracing the geographical dominions of the United States, excepting Alaska, are so radically different in many instances, and this difference is so imperfectly understood throughout the country, that these novel and embarrassing controversies growing out of matrimonial entanglements, result as a necessary consequence of systems so complex and varied, and concerning which, though the subject has been widely discussed, no legislative effort to render uniform and harmonious has thus far been accomplished. Since every state, territory, and country has legislated independently on these important subjects, the rules with regard to marital rights and obligations are as diverse and varied as the geography of the world.

It is apparent, from these observations, that in order to determine whether a marriage is valid, or whether in view of a subsequent marriage the first marriage has been dissolved; in order to ascertain whether offspring are legitimate, whether property rights at-

tach, whether the criminal statutes for the punishment of bigamy or polygamy have been violated, the first and essential inquiry must involve a question of geography. Where, in what state, or country, was the marriage contracted, or in what locality was it sought to be dissolved? Questions of sentiment, give way to questions of geography, in solving matrimonial problems, and in determining the rights which pertain to the matrimonial state.

We live in an age of scientific discovery, in which inventions for the appliance of steam and electricity have annihilated distance, and made the world common. Intelligence can be transmitted and communicated to distant cities in different states with the velocity of light, outstripping in dispatch even the velocity of sound. An individual can migrate into the various states with the same ease with which he journeys from his residence to the railway station. Under such conditions, the rules governing the domestic relations in our American commonwealth, united under one government, and yet possessing within its dominion nearly fifty distinct governments, with as many different systems regulating the essential matters pertaining to marriage and divorce, and forming within it the rules of domestic life, presents a social system so complex in its varied aspects and details, as to render an acquaintance with it difficult. But the knowledge with respect to it, is important and necessary, and will be found to be instructive and entertaining.

The discussion which has arisen in several of the States and in the Congress of the United States with a view to securing a uniform law upon the subject, either through a conference of representatives of all the States, as has been suggested to the legislature by the governor of New York, or by securing an amendment to the federal Constitution conferring upon Congress power to make a uniform law of marriage and divorce, is moulding public opinion as to the necessity of a uniform law. This pressing need becomes more apparent when the various systems now in force are examined and compared.

CHAPTER II.

WHO MAY LAWFULLY MARRY.

"What is there in the vale of life
Half so delightful as a wife,
When friendship, love, and peace combine
To stamp the marriage bond divine?"

COWPER.

THERE are certain disqualifications which preclude individuals from entering upon the holy estate of matrimony. These disqualifications, though exceptional, are, when they exist, clearly marked and well defined in most cases. They spring from the law of nature, as disqualifications of blood; or from mental or physical infirmity; or want of age. There are disabilities, however, created by the laws of the country where the individuals reside, while others spring from social prejudice or ecclesiastical restrictions, binding only in conscience in a given case, and turn largely upon matters of taste or of social manners and customs.

It is not our purpose to discuss now these various disqualifications. They will be considered fully in the following chapters.

The rule is, however, that any man and woman, being unmarried, and not related by blood, and not mentally incapacitated, may marry, though such per-

sons have not reached years of maturity; provided they are old enough respectively to be able to comprehend the nature of the marriage relation and consent to the union.

The element of consent is important. The age at which persons are allowed to consent to enter upon marriage differs in different states. So that the question, as to whether or not persons are really man and wife, who have gone through the forms of marriage, and who are in every way capable of marrying, save only with regard to the question whether they are considered old enough to marry, will depend entirely upon the law of the state or country where the marriage takes place. It is not necessary, in any country, that persons shall have reached the estate of manhood or womanhood in order to become man and wife, though in some states marriage licenses are not allowed to be issued to parties under age without the parents' consent. Children may lawfully marry. The important question is, at what age? Like all the inquiries in this important subject, the solution will depend upon a question of geography. If neither the would-be bride or groom have passed the age of seven years, there can be no marriage, and any ceremony performed with a view to make the couple husband and wife would not be recognized or sanctioned. The attempted marriage, though consented to by parents, would be absolutely void. But after the girl has arrived at the age of twelve, and the youth has attained the age of fourteen, they have

reached a period in life when, according to the old law of England, ordinarily termed the common law, and which still prevails in many States of the Union, they may lawfully consent to the marriage, and such marriage, if consummated by the parties living together as husband and wife, will be valid and binding, if the ceremony was performed in England or in Scotland, or in any State of the Union where the common-law rule still prevails. In some of the States, however, this rule has not been rigidly adopted, and the age of consent varies. In some States it is fixed at fourteen, fifteen, and sixteen in the female, and sixteen, seventeen, and eighteen in the male. This subject will be further considered in the chapter relating to the marriage of children.

The rule, however, as has been stated, is, that where the bride and groom are unmarried, and not related by blood, and are mentally capable of consenting, they may lawfully marry, though the bride is but twelve years of age, or in some States sixteen, and the groom is but fourteen years of age, or in some States eighteen.

To this general rule there are but rare exceptions, relating chiefly to differences growing out of race or color, religious convictions, or the relationship of the parties arising from ties of affinity.

CHAPTER III.

WHO ARE FORBIDDEN TO MARRY.

"For nature so preposterously to err,
Being not deficient, blind, or lame of sense,
Sans witchcraft could not."

SHAKESPEARE.

IT is a custom sanctioned by long usage to inquire whether any just cause or impediment exists which would make the marriage contract unlawful. For this reason it is customary in the Latin Church, as well as in the Church of England, to publish the banns, which is simply a notice made by the minister from the altar that a certain couple, whose names are given, are about to marry, and the congregation is asked to declare any cause or just impediment to the marriage, if such cause be known to any one. This inquiry is usually put to the congregation for three consecutive Sundays before the time fixed for the wedding. It is put also by the minister when he performs the ceremony. It is not a mere form. It is of the utmost importance to know, before the marriage takes place, whether there are facts which, if revealed, would render the marriage illegal and void, or voidable, and thereby entail misery and disgrace upon the parties or their offspring.

Fortunately the impediments which operate as a bar to the marriage, or which furnish sufficient grounds upon which to have it subsequently annulled, are not numerous. They rest, however, upon certain well defined principles of natural reason, or of public policy, such as disqualifications of blood; or impediments arising from mental or physical infirmity; or from the fact of the existence of a prior marriage as to one or both of the parties, which has not been annulled or dissolved, or a pre-contract or betrothal of one or both; or from the fact that fraud and deception have been practised to secure the consent to the marriage; or from the fact that one of the parties, while acting under the honest conviction that he or she, as the case may be, is a widower or a widow, is, in truth, the husband or wife of a living person. Philip Ray may be about to marry Annie Arden, wholly unconscious of the fact that the long-lost Enoch is anxiously waiting an opportunity to return to the confines of civilization, after an enforced absence or silence so continuous as to give rise to the belief that he is no longer in the land of the living. So that while engaged in the performance of an act which, under proper conditions, gives rise to the largest measure of human happiness, the parties, through ignorance or want of consideration or proper judgment, may be committing a crime against society, or involving their individual happiness, and which must, of necessity, end in misery and bitter disappointment. The result of such a blunder is likely,

also, to reach immediate posterity, destined to be brought into the world under conditions rendering their identity a compromise, and life a burden.

Where the error involves a violation of the law of nature, rather than the conventional rules which govern society, offspring may be shorn of the full measure of their mental faculties, rendering them helpless and imbecile. From inadvertence, ignorance, or design, therefore, that which was supposed to operate as a blessing will operate as a curse, and must result in humiliation and misfortune. If any can show just cause why the pair at the altar may not lawfully be joined together, it is a solemn duty in some way to make the facts known before the ceremony is performed.

But what is just cause? There are certain causes which all civilized communities will agree constitute a bar to marriage, and these rest, as has been already observed, upon grounds of natural reason or public policy. But there are other causes growing out of social prejudice, or ecclesiastical prescription, involving questions of taste or social custom, concerning which opinions differ widely. At what age may children lawfully marry? In England, under the common law, it is agreed that a girl of twelve and a boy of fourteen may consent to wed, and such wedding will constitute a valid marriage. This view is entertained also in some of the American States; while in others, the age of consent varies, as will appear in the following chapter relating especially to

marriage of children. Another question which has given rise to endless discussion is, whether one can marry any of his wife's kindred after the death of his wife. Can a man marry his deceased wife's sister? Can he marry his brother's widow? These are causes which some regard as impediments to marriage, while others claim that they furnish no such impediment. Where the parties belong to different races, are they precluded from marrying? Can a Chinaman, negro, or an Indian intermarry with a Caucasian? Is miscegenation a crime in morals, even where not prohibited by law? How many drops of negro, Indian, or Chinese blood will bar the individual from contracting marriage with a white person? Here again opinions differ widely, as to whether the cause existing by reason of race or mixed blood constitutes a legal impediment to the marriage. In some states and localities it does not constitute a barrier or disqualification, while in others such marriages are not only void absolutely, but the attempt to solemnize them constitutes a crime to which severe penalties are attached. Then again, does difference of faith, or religious training, constitute just cause to prohibit marriage? Should a Christian marry an infidel or a Hebrew; should a pious one unite with one notoriously wicked, without respect for divine things; or shall one in communion with the Roman Church wed a member of the evangelical body of Christian believers? These inquiries present causes which may or may not operate as impediments to

the marriage, depending largely upon the law of the state or country where the marriage is performed, or upon the conscientious scruples of the individuals concerned. While the matter of individual opinion on the subject may involve a question of taste or faith to be discussed by the casuist, the question as to whether the marriage, if entered upon, will or will not be recognized in law, is one which must of necessity take into account the geography of the situation, as a further examination of the subject will show.

CHAPTER IV.

MARRIAGE OF CHILDREN.

" Duty demands the parents' voice,
Should sanctify the daughter's choice ;
In that is due obedience shown ;
To choose belongs to her alone."

MARRIAGE is regarded in all secular tribunals in civilized countries as a civil contract. But it is the only contract which persons who are not of age can make, and which will be binding upon them. Individuals, as a rule, are not authorized to make ordinary business contracts until they reach the age of twenty-one. This is the period of life at which, in all civilized countries, persons are regarded as having reached years of maturity. Any agreement entered into, or any deed or paper signed by a person under twenty-one (save perhaps a last will and testament, which in some states can be made by a female at the age of eighteen), has no binding force, unless the party after coming of age chooses to ratify it. This rule, however, does not apply to the contract of marriage,—the most important engagement which the individual can make. If a girl twelve years old chooses to marry a lad of fourteen, the contract is binding and the marriage is valid, in England and Scotland,

or elsewhere in Great Britain, and also in Kentucky, Louisiana, New Hampshire, Tennessee, Virginia, and West Virginia. The children, when they arrive at the age of twenty-one, will not be permitted to repudiate the marriage on the ground that they were not of age when wedded. For obvious reasons, and on grounds of puplic policy, such marriages must be upheld. Where children are born of such a union, and important property rights have attached by virtue of the relation of husband and wife and parent and child, it would be cruel and unjust to allow the married couple to separate, simply because they had reached a period in life when they are allowed to enter upon all the duties and obligations in the commercial world which are incidental to man's estate. It would be manifest injustice under such circumstances, to allow the man to deprive his wife of her property rights, and to place his offspring in a condition before society and the world, where it could be said they were born out of wedlock, and being disinherited, might become a public charge, to be supported by the community at large.

This period of life, then, at which children may lawfully marry, is termed the age of consent. It is an age at which it will be presumed that the couple, taking upon themselves the duties and responsibilities of husband and wife, are able to comprehend the importance of the state into which they have entered, and to understand the meaning of the relation they have assumed. This age of consent, then, is

fixed, as we have said, in Great Britain, under what is called the common law, and in some of the American States, in which the rule of the old English law has been adopted, at fourteen on the part of the bridegroom and twelve on the part of the bride.

This period is not the result of a mere arbitrary rule, but is dictated on account of reasons which spring from physical causes, relating to the time of life when it is possible for a girl to become a mother, and a youth to beget offspring, although this period of development may be reached earlier or later, owing to climatic influences and physical temperament.

In certain parts of the United States the age of consent is fixed at twelve and fourteen in females and males respectively—namely, in Kentucky, Louisiana, New Hampshire, Tennessee, Virginia, and West Virginia. The inquiry naturally presents itself as to whether there is any other or different rule in other States with regard to this important question. In some States the age of consent has been raised. In New Mexico, if the groom is under twenty-one or the bride is under eighteen, and they marry without the consent of parents or guardians, the law declares the marriage invalid. In Iowa, North Carolina, and Texas the age of consent is fourteen in the case of females and sixteen in males; in Alabama, Arkansas, Georgia, and Illinois the age is fourteen in females and seventeen in males; in California, Minnesota, Oregon, and Wisconsin the age is fifteen in

females and eighteen in males; in Delaware, Michigan, Nevada, Nebraska, and Ohio the age is sixteen in females and eighteen in males. In New York, since 1887, the male must have attained the age of eighteen years and the female sixteen in order to give legal consent to the marriage, though from 1830 to 1887 the age was twelve in females and fourteen in males.

But in case children marry who have not attained the age of consent, what consequences follow? Or suppose it should happen that one of the parties was old enough to marry according to the rules above stated, and the other was not, what remedy have the parties? It may seem almost absurd to fix a minimum age at which an attempted marriage is void absolutely, yet it is stated by legal writers upon this subject that where neither party has attained the age of seven years, the attempted marriage is altogether null, and of no force or effect, so that it cannot be ratified afterwards, but there must be a new marriage. But if, after the parties have passed the age of seven years, and they marry, the marriage may be disaffirmed by either party when he or she reaches the age of consent, and the party so desiring will be allowed to come into a court of equity and have the marriage annulled on the ground that it was contracted before the party reached the age of consent. But after the couple have both passed the age of consent, if they continue to live together as husband and wife, they cannot be

divorced on the ground of non-age, for the reason that they chose, after arriving at the age of consent, to ratify and affirm the marriage previously contracted, and they will be husband and wife without having the marriage ceremony again performed. So that marriages between children under the age of consent may be set aside and annulled when the age of consent is reached. The parties, however, by living together as husband and wife after attaining that age, consent to the union, and this consent is binding upon them. If one of the parties to the marriage is over the age of consent and the other is under, yet if the party who was of lawful age when he married chooses to disaffirm the union when the other reaches the age of consent, it is in his or her power, at least in some States, to do so, if action is taken promptly. In some States, however, such marriages can only be set aside at the suit of the person under the age of consent.

But if children marry before reaching the age of consent, but never cohabit or live together as husband and wife, then, in some States, the marriage, never having been consummated, will be of no force or effect whatever when the parties reach the age of consent, if they do not choose to live together thereafter; and a divorce is not even necessary. This is the rule in Massachusetts, Michigan, and Virginia.

Marriages between minors frequently lead to serious family troubles, unless they have been entered into with the knowledge and consent of the father or

mother, guardian, or other person having the charge or custody of the parties. The disappointment of an angry parent when a child contracts marriage against his wishes or without his knowledge, leads sometimes to fatal consequences, and often develops a melancholy and romantic history, which furnishes a constant theme for the poet and dramatist.

Where parental confidence has been abused or violated on the child's wedding-day, is there no remedy, no punishment, no redress? Must a parent disinherit his wayward child in order to retaliate the cruel blow, which often results from marital disobedience of children, and sow the seed, in a last will and testament, which produces its bitter fruit after death has removed father or mother from earthly scenes? Does the law place no obstacle in the way of youthful lovers who marry in spite of their parents, or is forgiveness and reconciliation, if that is possible, the only balm? Upon whom does the punishment, if any, fall? Upon the minister or magistrate who performs the ceremony, upon the officer who grants the license, or upon the bride and groom?

The answer to these inquiries, as in other cases, involves a question of geography. In some localities, both bride and groom are subjected to punishment; in others, the penalty is directed to the party celebrating the marriage; in others, to the person issuing the license; while in some States and Territories liability attaches to all concerned, and in a few

instances the property rights of the wife or husband are involved.

The consequences which follow the marriage of children without the consent of parents or guardians will now be considered.

CHAPTER V.

CONSEQUENCE OF CHILDREN MARRYING WITHOUT CONSENT OF PARENTS.

"If there be a human tear
From passion's dross refined and clear,
'T is that which pious fathers shed
Upon a duteous daughter's head."

SCOTT.

As has been shown, children, when they arrive at the age, termed for convenience the age of consent, are capable of contracting a valid marriage, even without the consent of parents or guardians. In a great majority of States, however, ministers and magistrates are forbidden to perform the ceremony, and officers are prohibited from issuing a license to children who are old enough to contract marriage, though not of full age, without the consent of their parents or guardians, either verbal or in writing, first obtained, unless they have been married before. If, however, the marriage takes place without such consent, or even without a license, the failure to procure the license or to get the parents' sanction will not, as a rule, invalidate the marriage, but the punishment for violating the law must fall on the minister or magistrate who officiated at the wedding, or upon

the officer issuing the license without first requiring such consent, and in some few instances the property of the wife will pass into the hands of a receiver.

The legislation in Virginia, West Virginia, and Kentucky seems to regard secret marriages as an attempt on the part of an ambitious suitor to mend his fortune by contracting marriage with wealthy children contrary to the wishes of parents, and the law in those States is aimed to defeat, and thwart altogether, any such selfish design. Where a young girl has property in her own right, and her hand is sought or a runaway marriage is planned by some cunning wooer with an eye to secure his wife's fortune, while he might succeed in some parts of the country, he will utterly fail in the States above mentioned. A secret engagement in such a case deprives one of tender years of the benefit of paternal counsel and advice, and in this view the law has thrown a partial safeguard by way of protection against the rashness and folly of youth. It is declared in Virginia and West Virginia, if the child is over twelve and under fourteen, and marries without the consent of the parents, and has property in her own right, proceedings may be instituted on the part of parents, guardians, or next friend, to have the property of the bride placed in the hands of a receiver, and thus defeat the designs of an avaricious husband who may have sought the marriage in order to secure the control of the girl's estate. This result follows in Kentucky if the bride is under

sixteen, and the receivership in both Kentucky and West Virginia will continue until she is of the age of twenty-one, and then the property must be delivered to *her*, unless the court deems it prudent to longer continue the receivership. But in Virginia the receivership will continue during marriage, and if the wife should die first, then the estate would go to her relatives, but never to the husband. The officer issuing a license to a person under twenty-one, in Kentucky, knowingly, without consent of parents or guardians, or without taking a bond, may be fined not less than five hundred nor more than one thousand dollars, and expelled from office, and the celebrant may be imprisoned not less than a month nor more than a year, or fined not more than one thousand dollars, or both; and the bond of the groom, if he has given one, as required, will be forfeited. These stringent provisions, as a rule, never apply in any State or Territory to children who have been previously married.

In this connection it will be necessary only to name some of the remaining States where the most severe punishment attaches, in comparison with those where the punishment is very light, because the subject will receive further attention when the duties and liabilities of clergymen and magistrates come to be considered. In Florida, before performing the marriage ceremony, if the celebrant fails to require the couple before him to produce a marriage license, his negligence may cost him one thousand

dollars. The amount of the fine, however, is in the discretion of the court, and the sum named is the maximum amount, and there being no minimum, it is in the power of the court to make the fine nominal, should the circumstances surrounding the case authorize him to do so. The punishment may be meted out to the County Clerk in Nevada, should he be so unfortunate as to issue a marriage license to a groom under eighteen or a bride under sixteen—provided neither proves to be a widow or widower—without the consent of parent or guardian given personally or in writing. As in Florida, however, one thousand dollars is the maximum fine, with no minimum, leaving the amount to be fixed by the court in the exercise of its sound discretion.

Likewise in Minnesota, the Clerk of the District Court, whose duty it is to issue the license, should he neglect to comply with the legal formalities required of him, will be subject to the same forfeiture. If either party is a minor, he must be careful to get the personal consent of parents or guardians, or such written consent attested by at least two witnesses, one of whom must make oath before the Clerk as to the genuineness of the signatures attached to it. The rule applies in Pennsylvania to the Clerk of the Orphan's Court, who is the individual in that State upon whom devolves the perilous duty of issuing the license. In other States the fine must not exceed five hundred dollars, as in Colorado, Georgia, and Nebraska. Some States add imprison-

ment, as has been shown in regard to Kentucky; also in Kansas, Missouri, Nebraska, North Carolina, Oregon, and Wisconsin; but the punishment may be in the alternative—either fine or imprisonment. In Missouri, however, the celebrant who officiates at the wedding of a minor to which the consent of the father, if living, has not been given, or, if he is dead, or incapacitated, or not living with his family, the consent of the mother or guardian, is liable to forfeit three hundred dollars, to be recovered in a civil action, and is subject also to indictment, and may, on conviction, be imprisoned not exceeding six months nor less than one month. The celebrant, in Vermont, who performs the wedding ceremony without first requiring the marriage license, may be fined not less than ten dollars.

In Tennessee the law seems to be silent as to the age of consent; but in that State the groom must give bonds, with sufficient surety, in the sum of twelve hundred and fifty dollars before he can get his marriage license. The condition of the bond is that there is no lawful cause to obstruct the marriage, and if it turns out that there was no consent given to the marriage of the parties, the bondsmen would be compelled to pay the bond, if a court should decide that such consent was a lawful cause of obstruction. It is extremely doubtful whether failure to get the consent of the parents would constitute any legal impediment to the marriage, unless there was an express act of the legislature, declaring that such

consent must be had as a condition to the right to marry.

It will be observed, therefore, that while children may lawfully marry, the mere fact that such marriages are valid will not always excuse the officer who licensed them, or the clergyman, priest, or magistrate who performed the ceremony. Since the liability which ministers and others incur may also arise, even where the bride and groom are of full age, the subject will be further discussed in considering the duties and liabilities of clergymen and magistrates.

Thus far it has been shown what consequences fall upon persons other than the bride and groom, in cases of runaway or secret marriages, where the parties have not reached years of discretion. There are circumstances, however, when clandestine marriages are regarded as criminal in the eye of the law, and where the impetuous youth who steals his bride becomes a kidnapper and abductor, and may be punished as such. The question as to the legality of such marriages, and as to the punishment, if any, which attaches to them, involves, as in other cases, a question of geography. The rule, therefore, with regard to clandestine marriages will now be considered.

CHAPTER VI.

CLANDESTINE MARRIAGES AND RUNAWAY MATCHES.

Youth is nimble ; age is lame ;
Youth is hot and bold ; age is weak and cold ;
Youth is wild, and age is tame.

SHAKESPEARE.

THE States in which the stealing of a bride is regarded as a criminal offence are comparatively few. It sometimes happens, that a chivalrous suitor, entices his sweetheart to climb from the balcony window, in the pale light of the moon, beneath the tender influences of the stars, and accompanies her stealthily, through foliage and shrubbery, or over fields and fragrant gardens, or along silent streets or highways to the chosen rendezvous where the secret ceremony is to be performed. Whether, in so doing, the daring lover commits a crime, or whether such conduct, while not sanctioned, remains uncondemned, and passes simply as romance, under the trite maxim that "all is fair in love and war," will not turn upon a question of sentiment, but of geography. Where did the ardent lover woo the youthful maiden, and within what State did he encounter so many serious difficulties? This is the important inquiry in the solution of the question upon which his liberty, his

name, reputation, and domestic happiness perhaps will depend. The geographical limits within which bride-stealing, under certain limitations, is declared to be a crime, is embraced within the territory covered by the States of Florida, Massachusetts, Michigan, New York, New Jersey, North Carolina, South Carolina, Texas, and the Territory of New Mexico. And yet so differently are the laws framed that what would be abduction or matrimonial kidnapping in some of these localities, would not fall under the statutory prohibition in another; and if the bride enticed to the altar is over sixteen years of age, it will not be regarded as criminal in any of the States or Territories mentioned, nor anywhere within the United States. In Florida, Massachusetts, Michigan, New York, and South Carolina, if the bride is under sixteen, the statute applies. In New Jersey, however, a bride of sixteen, or who is not under fifteen, may be successfully kidnapped; while in North Carolina, New Mexico, and Texas she must be under fourteen in order to fall within the statute of clandestine marriages.

It should be here observed that, in speaking of clandestine marriages, espousals where force is used, or where women have been detained for immoral purposes, are not considered. In every State in the Union severe penalties are prescribed to punish criminals where abduction, ravishment, or immorality is practised, and in the law of Arkansas it is specifically declared that whoever "shall take un-

lawfully and against her will any woman, and by force, duress, or menace compel her to marry him, or to marry any other person, or to be defiled, shall suffer death." Indeed, it might be well if such heinous offences against the sex, more aggravating and cruel even than the crime of murder, were as severely dealt with in other places. Arkansas, in this regard, has set a wholesome example to her sister States. But all of them have enacted laws punishing such marital outrages more or less severely. In this chapter, however, it is intended to treat simply of clandestine marriages, where they have been declared criminal in the eye of the law.

Not every secret runaway match or clandestine marriage is punishable as a crime, but only such as involve the destinies of children of extremely tender years; and the law nowhere applies to such, in cases where the runaway bride is over sixteen years of age. But as to the magistrate who issued the license, or the minister or magistrate who performed the ceremony, the rule might be different.

Owing to the severe parental restrictions which exist in England, it was formerly quite common to hear of runaway matches, where the lovers repaired to Scotland in order to consummate the marriage, in accordance with the simple provisions of the laws which prevail in that country, where any person, whether magistrate, clergyman, or layman, may perform the ceremony. The famous resort for these runaway lovers was a place close to the

Scottish line, called Gretna Green, where an old blacksmith was accustomed to officiate in these affairs of the heart; and the history of that Scottish town is replete with the most exciting and romantic adventures, experienced by lovers who sought the borders of Scotland, to make good the betrothal which stern and unrelenting parents had forbidden. Some of the great men of England were married at Gretna Green, and other places in Scotland just across the border. Among them, no less a personage than Lord Eldon, the famous English Chancellor, and brother of the celebrated canonist Lord Stowell, who carried off a banker's daughter, having with the aid of a ladder spirited her away from her father's house, and fled across the border to Blackshiels, where they were married. Another exciting story is told of an English gentleman, who was carried away with the personal charms of his bride, and determined to wed her in spite of every obstacle. No sooner, however, had the lovers set out for Scotland than the secret was discovered, and the enraged father of the bride pursued the runaways with coach and pair at a break-neck pace. When the bride and groom had almost reached the Scottish line, the pursuing parent came within sight, driving at a furious rate, and lashing on his horses, determined, if possible, to prevent the marriage. The groom, however, not wishing to inflict bodily injury on his prospective father-in-law, yet determined to outgeneral him. He coolly directed his footman, when

the team of the pursuers had gained on him sufficiently, to take a pair of loaded pistols, with which he was provided, and to shoot dead the old man's horses. This simple device was carried out to the letter, and the ingenious lover galloped off into Scotland with his bride, and was married. Human nature is the same everywhere. Horace sagely observes with exquisite poetic grace—

"Cœlum, non animam, mutant, qui trans mare currunt."

There have been clandestine marriages and runaway matches in the past, and, unless human nature changes, they will continue to occur, more or less frequently.

Some distinguished figures in American history have courted their wives under circumstances no less romantic and exciting than those referred to in England and Scotland. General Knox, one of the conspicuous artillery officers in Washington's army, married the daughter of the provincial Secretary of Massachusetts, in spite of the opposition of the bride's parents. She seemed to possess all the patriotism, dash, and spirit of her daring husband, and shortly after the battle of Bunker-Hill, aided him in eluding the vigilance of the guards of General Gage's army in Boston; and having concealed his sword in the folds of her dress, the couple made good their escape. He arrived in Cambridge in time to participate in the siege of Boston. Knox was a favorite of Washington, and while acting in his cabinet as

Secretary of War, his gifted wife, whose talents and accomplishments were noted, held a foremost position in social circles at the capital. Doubtless Commodore Porter would have run away with his bride had not her father given his consent, which was at first flatly refused the young naval officer. The Commodore later received a handsome residence on the banks of the Delaware as a reward for his importunity in seeking the hand of his handsome bride, which was given the lovers on their wedding-day.

Jefferson Davis courted the daughter of General Taylor, but the stern old soldier bluntly forbade the match. The result was an elopement, and it is said the father-in-law never forgave his wayward son until captivated with his daring courage on the battle-field of Buena Vista. John C. Fremont, the first candidate of the Republican party for President of the United States, could not resist the charms of Miss Jessie Benton, the daughter of the distinguished Senator from Missouri; but notwithstanding his brilliancy and diplomacy, young Fremont could not win the consent of the Senator in his suit for the hand of his daughter. The parents' refusal, however, could never operate as a bar to the desire of the determined lover, and although the wedded life of General Fremont began with an elopement, the union was a happy one, of which Senator Benton, after his reconciliation with the couple, was always proud.

Legislatures can frame no statutes which can

evade the shafts of Cupid, nor have such laws been attempted. The only object of the legislation on this subject is intended to restrain the rashness and folly of children, too young to form any sober, prudent judgment upon matters concerning their domestic welfare. The law so far as it relates to clandestine marriages, wherein the runaway bride is under sixteen, is wise and wholesome legislation, and deserves to be encouraged.

In Florida the enticement of the bride, under sixteen, from her father's house, or wherever else she may be found, for the purpose of effecting a clandestine marriage, if done fraudulently and deceitfully, constitutes an offence. Perhaps any enticement, without the knowledge and consent of parents or guardians, would be fraudulent and deceitful, so far as the parents are concerned, while the girl might go voluntarily and of her own free will. The punishment for the offence is imprisonment not exceeding one year, or fine not exceeding one thousand dollars, or both fine and imprisonment in the county jail. The law in Massachusetts is quite similar to that in Florida, with the same punishment. The Massachusetts law, however, punishes also whoever aids and abets such clandestine marriage. In Michigan, any one who entices a girl under sixteen from her parents or guardians, without their consent, in order to marry her, may, on conviction, be imprisoned in the penitentiary not exceeding three years, or fined not exceeding one thousand dollars. In New Jersey,

whoever unlawfully conveys or takes a woman-child within the age of fifteen years from the possession, custody, or governance, and against the will, of parents or guardians, though with the child's consent, with intent to contract matrimony with her, is guilty of a high misdemeanor, and may be fined not exceeding one thousand dollars, and imprisoned at labor not exceeding five years, or either, and the marriage shall be void. In North Carolina, clandestine marriages are simply covered by the declaration that marrying a female under the age of fourteen years is a misdemeanor. Of course this result follows in that State, whether such a marriage with a girl so young was celebrated openly or secretly, or with or without the parents' consent. The marriage is declared void. In New Mexico, the bride, in order to fall within the rule of secret or clandestine marriages, must be under fourteen. The punishment is imprisonment not more than five years, or fine not less than one thousand dollars, or both; and the marriage is void. In Texas, if the girl is under fourteen, the crime of abduction is made out, if she is only detained, though afterwards released, without marriage or immorality, provided such detention shall continue for so long a period as twelve hours, whether the child consents or not. The punishment is by fine not exceeding two thousand dollars.

In South Carolina, where consent will constitute marriage, made by the parties themselves, without the intervention of priest or magistrate, it is declared

that if any person shall take away or cause to be taken away any woman-child within the age of sixteen, without the knowledge or consent of the father, if living, or of the mother if the father be dead, and shall by secret letters, messages, or otherwise, contract matrimony with her, shall on conviction be imprisoned five years, or shall be adjudged to pay a fine, one half of which shall go to the State and the other half to the parties aggrieved. The statute, however, does not fix the amount of the fine nor prescribe a maximum or minimum figure.

The punishment follows in the various States named, and elsewhere throughout the United States, where marriage is not intended, but immorality only.

Thus it will be seen what efforts have been made throughout the United States to punish clandestine marriages and runaway matches, where the bride has not passed the tender years of childhood.

CHAPTER VII.

FORBIDDEN MARRIAGES AMONG BLOOD RELATIVES. MARRIAGE OF COUSINS.

" 'Cause grace and virtue are within
Prohibited degrees of kin;
And therefore no true saint allows
They shall be suffered to espouse."

BUTLER.

MARRIAGE prohibitions on account of blood or kinship were not recognized among the nations and tribes who first occupied the globe. The weight of opinion among scientists would seem to regard communal marriage as the most archaic. Under this primitive system, as understood and explained by antiquaries, no man could appropriate a woman entirely to himself without infringing upon the rights of his comrades or fellow-clansmen dwelling together in those rude ages in the same community. Such an act, says Sir John Lubbock, in his "Origin of Civilization and the Primitive Condition of Man," would naturally be looked upon with jealousy, and only regarded as justifiable under peculiar circumstances. Communal marriage within the tribe, as distinguished from individual marriage, of necessity rendered men indifferent to ties of blood and kinship. They mar-

ried within their own groups or families—a custom which has been designated endogamy, as distinguished from exogamy, or marriage out of the tribe. It is conjectured also, by distinguished biologists, that this primitive form of communal marriage finally yielded to individual marriage and the practice of exogamy. In view of the fact that wives were universally the subject either of purchase or capture, Lubbock, in the work referred to, argues that there is abundant evidence to show that "the origin of marriage was independent of all sacred and social considerations; that it had nothing to do with mutual affection or sympathy; that it was invalidated by any appearance of consent; and that it was symbolized not by any demonstration of warm affection on the one side and tender devotion on the other, but by brute violence and unwilling submission." He concludes, therefore, that while individual marriage, so far as the women of the tribe were concerned, would be regarded as an infringement of communal rights, this infringement could not be claimed in the case of female captives taken in war. The warrior, if he saw fit, might put his captive to death; or, if it suited his caprice, he might keep her alive, without infringing upon the rights of his comrades-in-arms, since he alone, by his individual prowess, or by allotment, perhaps, in case a number were made captives, would be entitled to her exclusively.

There is indeed strong proof that endogamy prevailed among the Hebrews. From the account given

in the twenty-second chapter of the Book of Judges, we learn that the practice of procuring wives by capture was resorted to by the tribe of Benjamin, after the oath taken at Mizpeh, whereby the children of Israel were forbidden to give their daughters in marriage to the Benjamites. The latter then resorted to the custom which doubtless prevailed in that age, of securing wives by capture; and carried off by force what number of brides they desired of the daughters of Shiloh. This historical incident clearly indicates that exogamy was resorted to by the Israelites in the tribe of Benjamin not from choice but from necessity. The custom of securing wives either by purchase or capture still prevails among the savage and barbarous tribes in the remote and uncivilized portions of the globe.

Thus it seems clear that in the early history of the Hebrews, as well as other nations in those remote times, there was no prohibition against marriage on the ground of consanguinity. The first restrictions seem to have been prescribed by Moses, the great law-giver of the Jewish people, who forbade marriage between near kin of the same blood within certain degrees of consanguinity, and these salutary restraints were to a certain extent sanctioned and adopted by the Greeks and Romans. Other nations of antiquity, however, seem to have married their kindred without regard to ties of consanguinity. The Egyptians and Arabians, Medes and Persians, Parthians and Scythians, and the

inhabitants of Ethiopia were accustomed to marry their nearest relatives. Some ancient writers, and among them Strabo and Herodotus, charge that the Persians, and particularly the Magi, distinguished among their people for learning and refinement, were accustomed to marry their mothers, their sisters, and their daughters, and considered the offspring of such marriages most noble, and worthy of the highest sovereign authority. Indeed, it is said that Zoroaster, the most revered of all the prophets of this strange people, commended and sanctioned such marriages, and taught that, above all other alliances, those between first cousins were most deserving the reward of heaven.

The Jews, before the time of Moses, married near relatives and practised consanguineous marriages, like the Canaanites and other tribes which dwelt in the land about them. Adam's children, doubtless, intermarried; Abraham married his half sister; his brother Nahor wedded his niece, the daughter of another brother; Jacob married the sisters Rachael and Leah, who were his cousins; Esau's wife was his cousin, Judah's his daughter-in-law, the widow of his own son. Amram, the father of Moses, married Jochebed, a paternal aunt. But Amram's son, in the Levitical law, prohibited marriage among lineal kindred of near blood, and declared such practices as prevailed in this respect among the savage tribes of idolaters, as a wickedness and abomination in the sight of God. By this Jewish law, a Hebrew was forbidden to marry his mother,

or his sister, or his daughter, or his aunt; and a woman likewise was forbidden to marry her father, or her brother, her son, or her uncle, and the rule extended so as to declare unlawful all marriages among blood relatives nearer than first cousins.

In view of the odium and detestation of consanguineous marriages among modern nations, it has been declared that they are contrary as well to the law of nature as to divine ordinance, and that, as a result of this violation of natural law, they produce all sorts of mental and physical infirmity. Sterility, physical malformations, diseases of the mind and of the senses, rickets, albinoism, and a long list of other distressing maladies are said to be the legitimate fruits of these unnatural alliances. How far these charges can be sustained as scientific facts seems to be wholly a matter of speculation. The offspring of such marriages among the ancients were, many of them, persons of distinction and eminence, not only by the accident of birth, but by reason of mental and physical superiority; nor can it be shown that the royal family in the reigning houses of Persia, Arabia, Egypt, or other countries where such marriages were common, especially among the nobility, were afflicted to any greater extent than ordinarily prevailed elsewhere. Cleopatra, the most romantic, perhaps, of the ancient sovereigns, was the daughter of a brother and sister, great-granddaughter of another brother and sister, and a great-great-granddaughter of Bernice, who was both cousin and half-

sister to her husband. She, in accordance with the custom which prevailed in the time of the Ptolemies, wedded her younger brother. Yet it has never been charged that the Egyptian queen was deficient in mental or physical qualities; and judging from the character of her suitors, she possessed charms and accomplishments superior to any of her sex. Cæsar could not resist her wiles and blandishments, and Cæsar's friend, one of the greatest soldiers and orators of antiquity, blinded by her allurements, neglected the sovereignty of the world, and willingly surrendered his life for her sake.

But whatever may have been the custom among primitive people, who belonged to exclusive tribes, and dwelt in tents, who married and intermarried among themselves; or whatever may have been the practices which prevailed among the more ambitious heathen and idolatrous nations skilled in art and architecture, who built cities and adorned them with grand edifices, the ruins of which still challenge the wonder of mankind, certain it is that among modern nations consanguineous marriages are regarded as relics of barbarism and moral darkness.

It will be observed that the Levitical law prohibits marriage among blood relatives nearer than first cousins. The Latin Church, however, which in the Middle Ages assumed exclusive jurisdiction in all things pertaining to matrimony, and placed the celebration of marriage among the sacraments, extended this prohibition, under Gregory III. (A. D.

731), to the seventh canonical degree, which was equivalent to the fourteenth civil degree, and prohibited marriage between sixth cousins. This unreasonable rule, in some isolated towns and villages, where people were nearly all more or less related, amounted almost to a prohibition of matrimonial privileges. While it was a source of great advantage and power to the Church, which, for proper considerations granted special dispensations relaxing the severity of the rule, it nevertheless excited severe comment and wide discussion, and some very queer reasons were assigned for the existence of such a broad prohibition, extending at first to the fourth degree and afterwards to the seventh degree of consanguinity. Here is a specimen of pleasant irony indulged in by Jeremy Taylor on this subject: "They that were for four," he said, "gave this grave reason for it. There are four humors in the body of man, to which, because the four degrees of consanguinity do answer, it is proportionable to nature to forbid the marriage of cousins to the fourth degree. Nay, more, there are four elements; *Ergo.* To which it may be added that there are upon a man's hand four fingers and a thumb. The thumb is the *stirps*, or common parent; and to the end of the four fingers, that is, the four generations of kindred, we ought not to marry, because the life of man is but *a span* long. There are also four quarters of the world; and indeed so there are of every thing in it if we please, and therefore abstain at least till the fourth degree be past.

Others who are graver and wiser (particularly Bonaventure) observe cunningly that beside the four humors of the body there are three faculties of the soul, which, being joined together, make seven, and they point out to us that men are to abstain till the seventh generation. These reasons, such as they are, they therefore were content withal, because they had no better. Yet upon the strength of these they were bold even against the sense of almost all mankind to forbid these degrees to marry."

This censorship over love affairs, however, though wholly arbitrary, gave the Church so much power and such an influence in the courts of Christendom, when matrimonial alliances were contemplated for political reasons, that England, during the reign of Henry VIII., declared, by an Act of Parliament, that the Church should not question marriages not prohibited by God's law, as set forth in Leviticus, so that the line of relationship was drawn at first cousins. By a prior Act of Parliament, however, in the same reign, those who were forbidden to marry were expressly designated, and embraced not only blood relatives but relatives by marriage, and by this law of Parliament it was declared that no man should marry his mother or step-mother, his sister, his son's or daughter's daughter's daughter, his father's daughter by his step-mother, his aunt, his uncle's wife, his son's wife, his brother's wife, his wife's daughter, his wife's son's daughter, or his wife's daughter's daughter, or his deceased wife's

sister. These restrictions still exist in England, but they have not been wholly followed or adopted in the United States.

The Latin Church no longer assumes to prohibit marriage within the limitations prescribed by it in the eighth century. It has long since recognized the injustice of prohibitions so sweeping and unreasonable as those which existed in the time of Gregory III. Its canons now preclude intermarriage only among blood relatives nearer than second cousins. But even first cousins will sometimes be permitted to wed by special dispensation, and such unions cannot for that reason always be regarded as a positive sin. As a Catholic writer delicately expresses it: "In cases where the alternative is marriage or misery, the Church, as a thoughtful mother, grants her dispensation." Late in the eleventh century Gregory the Great placed the objection to the marriage of cousins wholly upon physical or sanitary grounds. Impressed with the popular belief which then prevailed, and which still prevails to some extent, he believed that such marriages were not fertile, and declares: "We have learned from experience that from such marriages offspring cannot grow." Notwithstanding this popular impression there are instances, not only abroad but in our own country, in which relatives have intermarried for generations, with the deliberate design and purpose of retaining the wealth and property of the family. The result seems, to a

degree at least, to have developed deplorable consequences. Upon this subject a Southern journalist, referring to certain family connections in his own neighborhood, remarks: "For twenty generations back certain families of wealth and respectability have intermarried, until there cannot be found in three or four of them a sound man or woman. One has sore eyes; another, scrofula; a third is an idiot; a fourth, blind; a fifth, bandy-legged; a sixth, with a head about the size of a turnip; with not one of the number exempt from physical defects of some kind or other."

It is possible that deplorable results follow where relatives have intermarried habitually for generations. But so far as the marriage of cousins is concerned, at least when the custom has not been in vogue for years among kinsfolk, the result does not warrant the conclusion that such marriages are either unfruitful, or detrimental to the physical condition of offspring. A most careful and thorough examination of the subject of the marriage of cousins has been made by Mr. George H. Darwin, a distinguished biologist, and son of the great scholar and scientist of the century, and his investigations have shown such marriages to be as fertile as ordinary marriages, with the odds slightly in their favor. As regards physical infirmities he finds that "the percentage of the offspring in asylums is not greater than that in the general population to such an extent as to enable one to say positively that the marriage of first

cousins has any effect on the production of insanity or idiocy," and he finds no difference at all with respect to deaf-mutes. He inclines to the opinion, however, that "various maladies take an easy hold of the offspring of consanguineous marriages." There can be little doubt on this point, that the great danger in the marriage of cousins is that both may inherit from a common ancestor a tendency to some serious constitutional disease or weakness. Marriage of first cousins, however, is not contrary to the canon law which prevails in the Church of England, and from a Protestant standpoint, therefore, is not forbidden. In fourteen States of the American Union are such marriages prohibited by law, as will be shown presently.

Among refined states living under Christian influences, in which the honor, the purity, and the sanctity of the home are upheld and cherished, in which virtue is esteemed as essential to sound morality, incest, or marriage between near kin of the same blood, is abhorred as a crime, and an abomination most degrading and offensive. Though regarded as a grievous sin by the clergy in the early Christian Church, who were constrained, perhaps unwillingly, to vows of celibacy, consanguineous marriages were punishable only by ecclesiastical authority. They were not made penal under the civil law. This may arise partly from the fact that in many European countries matters pertaining to marriage and divorce were exclusively within the purview of Church

authority. It is only by comparatively recent laws in England, and in the States and Territories of the American Union, that incest has been made a crime punishable as felony.

In some States the crime of incest embraces not only marriage among near kin of the same blood, but extends to relationships which exist by reason of marriage, or ties of affinity. In this chapter only forbidden marriages among blood relatives will be considered. Marriage among persons related by affinity, and the legality of marriage with a deceased wife's sister, will be examined in the following chapter, relating to marriage among husband's or wife's kindred.

In a great majority of the States and Territories of the Union the prohibition against marriage of near kin is confined to marriages between parents and children, including grandparents and grandchildren of every degree, ascending and descending, and between brothers and sisters of the half as well as of the whole blood. In New York such marriages are declared to be incestuous and absolutely void, and the prohibition extends to illegitimate as well as legitimate children and relatives. The New York statute also makes the maximum or highest punishment for the crime of incest imprisonment for not more than ten years, but no minimum penalty is prescribed.

In other words, in most States a man and conversely a woman is forbidden to marry his or her

lineal ancestor or descendant, or his or her brother or sister of the half or whole blood. This is so in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Dakota, Delaware, Idaho, Indiana, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Maine, Minnesota, Michigan, Montana, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, Nevada, Nebraska, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, Wisconsin, Washington Territory, West Virginia, and Wyoming. In a number of these States it is expressly declared that the prohibition exists whether either person or his parent is legitimate or not. This is so in Alabama, Arkansas, Arizona, California, Colorado, Dakota, Illinois, Idaho, Kansas, Kentucky, Louisiana, Missouri, New York, Nebraska, New Mexico, and Wyoming.

In Georgia and Florida, the prohibition seems to be modelled after the statute of Henry VIII., which declared all marriages lawful except those prohibited by God's law. In those States the law of Moses has been re-enacted, and persons are prohibited from marrying within the Levitical degrees.

In many States a man is forbidden to marry his niece, and a woman is likewise forbidden to marry her nephew, by blood. This is so in Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Dakota, Delaware, Idaho, Indiana, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota,

Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, Nevada, Nebraska, North Carolina, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Wisconsin, Washington Territory, West Virginia, Wyoming.

In Delaware and Kentucky a man is forbidden to marry a daughter of his brother's or sister's child; and a woman, likewise, is forbidden to marry a son of her brother's or sister's child.

With respect to the marriage of cousins, there is and has been great diversity of opinion. Cousins are related collaterally, and not being lineal kindred, are excluded from the prohibitions prescribed in many States. Some of the objections to these marriages have already been referred to and discussed. It has been shown that the marriage of cousins has been condemned in some quarters on moral grounds; also because of the popular notion, more or less widely entertained, that they are contrary to natural law. Some results of recent scientific investigation have been given, which clearly indicate that much of the prejudice against such marriages, based upon the assumption that they are not fertile, or that offspring, if produced thereby, are liable to suffer from mental or physical infirmity, is wholly unwarranted. With reference to the objections to such marriages from a moral standpoint, it appears that they have been forbidden by the rules and discipline of the Roman Catholic Church, except when allowed by special

dispensation; but that they are not in express terms forbidden by the canons of the Protestant Episcopal Church, nor by any other Christian sect. It only remains to consider how such marriages are regarded by the civil law, in the various States of the Union. In many localities, collateral relatives after brothers and sisters are not within the prohibited degrees of consanguinity. In those States where the law is silent on the subject of the right of cousins to marry, such espousals must be upheld as legal and valid. In the State of New York, for example, where only lineal ancestors, or lineal descendants, after brothers and sisters are forbidden to intermarry, cousins not falling within the prohibition may lawfully marry. In fourteen States only are such marriages positively forbidden by law; and in the remainder of the States cousins may lawfully marry. The localities in which the marriage of cousins is criminal are embraced within the boundaries of Arizona, Arkansas, Colorado, Dakota, Illinois, Indiana, Kansas, Montana, Nevada, New Hampshire, Ohio, Oregon, Washington Territory, and Wyoming. The last State added to this list was Illinois, which forbade cousins to wed as recently as June, 1887. These varying rules of wedlock may give rise to very serious questions, because of the conflicting principles of international and interstate law embraced in these two propositions: first, a marriage valid where solemnized is valid everywhere; second, every State has power to adjudge the status of its own citizens. Now suppose

the cousins were citizens of Illinois dwelling in Chicago. And suppose, moreover, these cousins were desperately in love. When about to fix the wedding-day, they learn that cousins are forbidden to marry by the laws of Illinois, and that such marriages, if performed, are criminal, and void absolutely. Here is a dilemma. But there is an old saw—

> "If a woman will, she will, and you can depend on 't.
> And if she won't, she won't, and there 's an end on 't."

Lovers are ingenious sometimes, and always determined. Suppose they should conclude to wed in spite of the law, and should take a train to Milwaukee, in the neighboring State of Wisconsin, where cousins are permitted, or at least not forbidden, to espouse. By crossing a State line, that which would have been a void act becomes a valid ceremony, and that which would have subjected the parties to a criminal indictment, renders them husband and wife. The marriage is valid in Wisconsin, and the couple go home. The question at once presents itself, what is the effect of the transition from Wisconsin to Illinois? The bride and groom are not citizens of Wisconsin at all, but of Illinois; and it is an elementary rule of international law that every State has power to adjudge the status of its own citizens, and to prescribe the rule of social life within its borders. Their status in Wisconsin is one thing. What is their status in Illinois? Those who assert that the marriage is valid in the latter State,

hold to the well-established doctrine that a marriage valid where solemnized is valid everywhere. Those who might question the validity of the marriage, would claim that the status of the citizens of Illinois must be governed by the laws of Illinois.

Just what construction the courts would put upon the validity of such marriages, it will be impossible to conjecture until the question arises. It may be observed that the citizens of Illinois are also citizens of the United States, and the Federal Constitution provides "that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." If the immunities to which citizens of Wisconsin, under the circumstances, would be entitled to, should accrue under the Constitution to the citizens of Illinois after their return from Wisconsin, whither they had gone to evade the laws of Illinois, the provisions of the Constitution referred to might shield and protect the parties in their own State.

This inquiry presents a question of the very highest importance. Some light may be thrown upon it by ascertaining what exceptions, if any, exist with respect to the rule just stated, that a marriage valid where celebrated is valid everywhere. Mr. Joel P. Bishop, a writer of wide reputation, universally acknowledged as standard authority upon this subject, in his work on "Marriage and Divorce," declares that incest and polygamy furnish the principal exceptions to this rule yet developed in the progress of juris-

prudence. But can it be truthfully said that the marriage of cousins constitutes incest within the meaning of the exception. According to Mr. Bishop, there must be an infringement of the law of nature in order to render void a consanguineous marriage. Cousins being in the collateral line may marry without offending any supposed natural law. "All marriages," says Mr. Bishop, "between persons in the lineal ascending and descending degrees of blood relationship and between brothers and sisters in the collateral line, whether of the whole or half blood" are within the prohibition of natural law, and for that reason incestuous and void. More correctly speaking, marriages involving the ties of blood referred to may be said to contravene, not the law of nature, but the moral law as declared by Moses, by divine authority; because before the time of Moses, marriage among near kindred was not regarded, even by the Israelites, as contrary either to natural law or to divine revelation. Cousins are not prohibited from marrying by the Mosaic law, and are not included in the table of prohibited degrees published in 1563 by Archbishop Parker, and embraced in the ninety-ninth canon of the Church of England in 1603. Such marriages cannot be said to offend good morals, and cannot be claimed to be incestuous.

Citizens of Illinois, then, being cousins, and desiring to marry, finding they are forbidden to do so at home, go into an adjoining State, still a part of their own country, where their wedding will be legal and

valid. By availing themselves of the liberal provisions of the laws of Wisconsin, how can it be said they have committed a crime? Their marriage would be good in every other State in the Union. Why should the territory of Illinois be the only spot in the United States where their children would incur the stigma of bastardy, and their espousals be declared void? So long as the law of Illinois contains no positive declaration that in case a citizen goes out of the State to marry in order to evade its laws, with intent to return, that a marriage so contracted will be void in Illinois, the rule would seem to be that the marriage would be governed by the law of the State where it was solemnized; and being valid there is valid everywhere. This precise point was passed upon in Kentucky, where a man is forbidden to marry the widow of his deceased uncle. The parties being so related went over to Tennessee where such marriages were not prohibited, and were wedded. On their return the Kentucky courts upheld the marriage, declaring it to be valid as well in Tennessee as in Kentucky. This subject will be further considered when we come to specially discuss the proposition that a marriage valid where solemnized is valid everywhere.

In the State of Rhode Island, however, where the matrimonial prohibition extends to step-parents and step-children, and sons-in-law and daughters-in-law, it is expressly declared that Jews may contract valid marriages, though related, so long as such marriages

are within the degrees allowed by their religion. With commendable liberality, therefore, the legislature of this New England State has had respect for the religious liberty, or liberty of conscience, exercised by devout Hebrews within her borders. So that in affairs of love they may follow the rules prescribed by their religious convictions, which is based upon the statutes of one of the wisest law-givers of any age.

CHAPTER VIII.

MARRIAGE AMONG HUSBAND'S OR WIFE'S KINDRED—MARRIAGE WITH DECEASED WIFE'S SISTER.

"What do you think of marriage?
I take it as those that deny purgatory;
It socially contains or heaven or hell;
There is no third place in it."

WEBSTER.

IT has been shown that marriage between near kin of the same blood, in the ascending or descending line, or nearer than first, and in some instances than second cousins, is not only contrary to divine law, refined taste, and sound morality, but is also contrary to human law, and is forbidden by the statutes of the various States and Territories of the United States, and also in Great Britain and throughout the Christian world. Recent legislation has made a violation of these laws felony, and upon indictment and conviction offenders in many States of the Union incur the penalties which attach to the crime of incest. Where the relationship between the parties exists by reason of blood or ties of consanguinity, it is generally agreed by the laws of modern society that such marriages are void absolutely. But where the relationship exists by reason

of marriage, or ties of affinity, whether marriage between parties so related is proper, is a question upon which there is a very wide difference of opinion, and which has provoked endless discussion in both Europe and America. The Latin Church has persisted in its hostility to such marriages, but its opposition has been scarcely less stern and unyielding than that assumed by the Church of England. When it separated from the Church of Rome, Henry VIII., its nominal head, used his influence and secured an act of Parliament forbidding marriage within certain degrees of affinity; and since the time of the Tudors the House of Lords has steadily resisted every attempt to have this legislation repealed. The act of Parliament referred to forbade marriage with many of the wife's and husband's kindred, as well as blood relatives, declaring that no man should marry his mother or step-mother, his sister, his son's or daughter's daughter, his father's daughter by his step-mother, his aunt, his uncle's wife, his son's wife, his brother's wife, his wife's daughter, his wife's son's daughter, or his wife's daughter's daughter. It also in express terms forbade a man to marry his deceased wife's sister.

Although this prohibition against the marriage of a deceased wife's sister has prevailed so long in England and elsewhere in continental countries, the view with regard to such prohibition has not been generally adopted in the United States.

While such marriages are not sanctioned or ap-

proved in many churches, and by some ecclesiastical authorities are deemed highly inexpedient, inconsistent with domestic purity, and exceedingly offensive to a large portion of the Christian Church, yet, in many Protestant churches, at least, such marriages are no longer regarded as contrary to the Levitical law, although, in some instances, parties who contract them will be subjected to ecclesiastical censure and disciplined accordingly. Such penalties, however, as religious societies may choose to inflict cannot extend so as to interfere with the rights and privileges guaranteed to every citizen, unless the law of the State prohibits such marriages. Virginia was perhaps the only State in which a marriage with a deceased wife's sister has been declared to be unlawful. Elsewhere throughout the United States the law is either silent upon the subject or has expressly approved and sanctioned such marriages. In Vermont it has been expressly declared by the highest judicial authority, that marriage with a deceased wife's sister is perfectly good and valid. And the reason for this view of the law is based upon the distinction between ties of consanguinity and ties of affinity; between relationship existing in blood and relationship created by marriage. The relationship of blood is derived from the law of nature, and can never be dissolved; but the relationship created by marriage never had any existence at all until the marriage took place, and continues only so long as the marriage continues. But when death dissolves the marriage,

it dissolves likewise the relationship, which it, and it alone, produced. So the Court reached the conclusion that although a man is by affinity brother to his wife's sister, yet upon the death of his wife he may lawfully marry her sister.

Whether, therefore, a man who marries his deceased wife's sister stands blameless before the law and lives in a state of matrimony and is allowed to call his children legitimate; or whether in so doing he has committed a crime which may relegate him to a felon's cell and brand his offspring as illegitimate, will turn, not strictly upon a question of morals, but upon a question of geography. If the couple happened to contract the alliance in Rutland, Brattleboro, Montpelier, or anywhere in the State of Vermont, the alliance would be a lawful marriage, and no penalties could attach to the act. But if it happened that the marriage took place at Richmond, or elsewhere in the State of Virginia prior to the fifteenth day of March, 1860; or if the celebration of the nuptials was performed in London or elsewhere in England, the parties upon conviction would be branded as felons, and their offspring would be disinherited.

The law of Virginia by which a man was forbidden to marry his deceased wife's sister existed prior to the late war of the rebellion, and was repealed on the fifteenth of March, 1860. Since that time there is no law in Virginia which prohibits in express terms marriage with the sister of a

deceased wife. Such marriages are not prohibited by statute in other portions of the Union, so that, if celebrated within the United States, they may be considered legal. In England, however, they are still forbidden.

Certain other marriages between relatives of a deceased husband or of a deceased wife are condemned by ecclesiastical authority, although many of them are not contrary to the laws of the State. Marriage with a brother's widow is deemed censurable. So marriage with a wife's brother's daughter, though not forbidden by the Scriptures, will subject the parties to discipline in some churches. This censure extends also to marriage with a deceased wife's sister's daughter, or with a half-brother's widow. As to what kindred of the deceased husband or of the deceased wife a man or woman is forbidden to marry by the law of the land, will depend upon questions of geography. Marriages between step-parents and step-children are declared unlawful in twenty-two States and Territories. So that a man is forbidden to marry his father's widow or his wife's daughter; and a woman likewise is forbidden to marry her step-father or her step-son, in either of the following States: Alabama, Connecticut, Delaware, Georgia, Iowa, Kentucky, Massachusetts, Maine, Michigan, Mississippi, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington Territory, and West Virginia.

A man cannot marry his wife's step-daughter, nor a woman her husband's step-son in Virginia or West Virginia.

Marriages between grandparents and grandchildren are prohibited in eighteen States. A man, therefore, may not marry his grandfather's widow, nor his wife's granddaughter; nor can a woman marry her grandmother's husband in Alabama, Deleware, Georgia, Iowa, Kentucky, Maine, Massachusetts, Michigan, Maryland, New Jersey, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and West Virginia.

Sons-in-law and fathers-in-law and daughters-in-law and mothers-in-law are forbidden to intermarry in nineteen States and Territories, namely, Alabama, Delaware, Georgia, Iowa, Kentucky, Maine, Massachusetts, Michigan, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington Territory, and West Virginia.

Grandparents are forbidden to marry the widows or widowers of grandchildren in thirteen States and Territories; so that a man cannot marry his grandson's widow, nor a woman her granddaughter's husband, and inversely, in Delaware, Kentucky, Maine, Massachusetts, Michigan, Maryland, New Hampshire, New Jersey, Rhode Island, South Carolina, Tennessee, Vermont, and Washington Territory.

In Virginia and West Virginia it is unlawful for

a man to marry his wife's step-daughter; or for a woman to marry her husband's step-son; nor can she marry the husband of her niece. In West Virginia it is unlawful for a man to marry his nephew's widow. And in Alabama a man shall not marry his uncle's widow.

CHAPTER IX.

MONGREL MARRIAGES—MISCEGENATION.

" First Senator.—But, Othello, speak :—
Did you, by indirect and forced courses,
Subdue and poison this young maid's affections ?
Or came it by request, and such fair question
As soul to soul affordeth ?

. . . . . .

" Brabantio.—I pray you hear her speak,
If she confess that she was half the wooer,
Destruction on my head, if my bad blame
Light on the man ! " Shakespeare.

Miscegenation is a modern crime. Until within comparatively recent years, difference of race or color constituted no bar to marriage, nor were mongrel marriages regarded as criminal in the eye of the law. There was no prohibition growing out of race or color known to the common law of England before the American Revolution, although almost immediately thereafter, in the year 1786, a law was passed in Massachusetts forbidding marriage between white persons, Indians, or mulattoes. Massachusetts, however, furnished the pioneers in the great struggle for universal freedom, which culminated in the abolition of property in human beings. Doubtless the influence of these fearless men led to the repeal of the

statute, restricting marriages on account of race distinctions. The law was abolished in Massachusetts in 1843, nearly half a century ago.

The intermarriage of whites and blacks is certainly revolting, and offensive to good taste. But the ground on which such relationships are prohibited cannot spring from a violation of the laws of physical science. When different species are considered, it will be observed that union between a male and female, as a rule, is unproductive; but when fertile, produces an offspring which does not resemble either of its parents, a mixture in nearly equal proportions of the separate characters. Plants, or animals, belonging to distinct species, as a rule, are not able when crossed with each other to beget progeny. To this rule, however, there are numerous exceptions, and certain species when crossed produce offspring, or hybrids, but these hybrids, among the lower animals, are usually sterile.

To the race of mankind, however, this law of nature has no application. The human family descends from common parents, and constitutes but one species. "Seeing He giveth to all life, and breath, and all things; and has made of one blood all nations of men for to dwell on all the face of the earth." Members of diverse races have intermarried from the earliest times. Moses, who belonged to the Semitic race, when a stranger in a strange land, after his flight from Egypt, married Zipporah, the daughter of a priest of Midian, an Arabian girl dwelling among

the Bedouins of the desert. Ishmael dwelt in the wilderness of Paran, and married a wife out of the land of Egypt, a nation, which according to very high authority, is said to be a modified African race. From this mixture of races came the myriad tribes of the desert. The mulattoes are descended from Europeans and negroes; the Mestizos, from Europeans and Indians; Zanibas, from Americans and negroes; and mixed Creoles, of European and tropical Indian descent. These crossed or sub-races are most fertile, and demonstrate that mankind embraces but a single species, and though the image may be cast in different types and colors, which, for convenience, are classed into separate races, yet hybridism, so far as mankind is concerned, does not result in sterility.

The prohibition of matrimony among persons of diverse races is based largely on grounds of public decency, and is forbidden in some States, while in others the prohibition is coupled with severe penalties and constitutes a crime. In other localities, however, there are absolutely no restrictions or limitations, so far as race differences are concerned. The inexpediency of legislation punishing bad taste as a crime, as at present existing, becomes apparent when the law of the various States covering this branch of the subject is examined and analyzed, and the glaring defects, inequalities, and inconsistencies are pointed out. Men of refined instincts will doubtless agree that it is shocking bad taste for a white man to intermarry with an African, or a Mon-

golian, or an Indian. Every sense of propriety and social decorum must of necessity repudiate the incongruity and fantastic anomaly exhibited by such unseemly alliances. Nevertheless it may be pertinent to inquire whence society derives the moral right at least to punish a man because of his taste, or to make him a criminal for the sake of his taste, even though the exercise of judgment may appear degrading and offensive. The portions of the United States in which the social status of the citizen has been made the subject of legislation, cover the Southern States, one of the Middle States, eight of the Western States, and two Territories, as follows: Alabama, Arkansas, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Texas, and Mississippi. In Louisiana, also, by judicial authority. The only one of the Middle States in this category is Delaware. The Western States embrace California, Colorado, Nevada, Missouri, Indiana, Nebraska, Ohio, and Oregon. The Territories referred to are Arizona and Dakota. Twenty-two States and two Territories have legislated on this topic, and the courts of Louisiana have acted in harmony with the legislatures of the Southern States with regard to it. Massachusetts, Maine, and Michigan have deliberately abolished all legislation on the subject of race marriages, and such alliances are not prohibited or made criminal in any of the States or Territories except the twenty-five above enumerated.

The legislation, however, making miscegenation a crime is vague and shadowy, and lacks consistency or uniformity to an extent which renders it not only incongruous but in some instances ludicrous, as a cursory examination will show. In Alabama, Maryland, North Carolina, Tennessee, and Texas the line is drawn at the fourth generation, so that the crime is committed if the offender marries a descendant of African parents to and including the third generation, notwithstanding one ancestor in each generation may have been white. In other localities the crime is measured by the drops of blood flowing in the veins of the parties; so that in Mississippi, Nebraska, Oregon, Virginia, and West Virginia, the offender must have espoused a person having one fourth negro blood, and if it turns out that the woman has an extra drop of white blood, she is a lawful wife, and no crime has been committed. In Florida, Indiana, and Missouri, if the groom is white and the bride has but one eighth negro blood in her veins, the marriage is penal, whereas an extra drop of white blood would render it valid. In one locality a white man may marry an octoroon, but not a quadroon; while in another locality the octoroon marks the boundary line in testing the guilt or innocence of the bridegroom. In Ohio, however, the line is even more vague and shadowy. In that State, in order to constitute the crime, one party must be of pure white blood, and the other must have a sufficient amount of African blood to render that fact visible to the

naked eye. In such a conflict of shade and shadow the line of demarcation upon which the liberty of the prisoner depends is vague indeed. To scientific eyes the marriage might be considered void, since in order perhaps to sustain some ethnological theory, color enough might be imagined to taint the blood, while to another, who had never made a specialty of race distinctions, it might be apparent that the blood was pure. One set of experts would testify one way, and others might readily be found who could conscientiously testify to directly the opposite; so that the liberty of the bride and groom, who perhaps had the misfortune to be ignorant and guilty of bad taste, and the legitimacy of their children, would be involved in the whim or caprice of experts or jurymen who differed on questions in the science of anthropology.

The inconsistency of this legislation is further apparent from the fact that in some States the prohibition is directed only against Africans or mulattoes, while in others it is extended to Chinese, Kanakas, and Indians. In Arizona, Nevada, and Oregon, Chinese or Mongolians are named in the prohibition. In California it is criminal to issue a license for the marriage of a white person and a Mongolian, though the marriage is not in terms declared criminal. Nevada and South Carolina prohibit marriage between whites and Indians, while in North Carolina the Indians under prohibition are confined to a particular tribe, known as the Croatans. In Oregon the prohi-

bition embraces persons having one fourth or more Kanaka blood.

Georgia, by her constitution, adopted in 1865, has made legislation of this character an anachronism; and should the legislature choose to repeal existing laws on the subject, they could not constitutionally enact others of like import. "The social status of the citizen," says the constitution, "shall never be the subject of legislation." Indeed it is a question whether since this constitution went into effect the old law making race marriages a crime is not thereby rendered inoperative, since any effect to enforce it now would operate upon the social status of the citizen. However this may be regarded, no new laws on the subject can now be passed.

Want of harmony and consistency characterize all legislation on this rather novel subject of mixed race marriages, upon which opinions will differ. Should the effort to secure uniformity of legislation concerning marriage and divorce promise success in the future, this branch of the subject should not be overlooked.

CHAPTER X.

BIGAMY AND ITS CONSEQUENCES—MATRIMONIAL ENTANGLEMENTS.

"The ancient saying is no heresy,
Hanging and wiving go by destiny."

SHAKESPEARE.

THE fact that a person has more than one husband or one wife living at the same time, may or may not constitute the crime of bigamy. Every State in the Union has treated double marriage contracted under certain circumstances as a crime, and attached to it penalties more or less severe. This is true, notwithstanding the fact that in Utah polygamy is not only practised, but forms an element of religious belief within the Mormon Church, a sect which originally settled in that country. Yet, paradoxical as it may seem, polygamy is forbidden by the laws of Congress within the Territory, and Congress has jurisdiction and ample power to prescribe what the social laws of Utah shall be. The law prohibiting this social evil, which has so long been a stain upon the fair name of the Republic, can be enforced by Congress, and all the resources of the Federal government may be brought to bear in order that the law may be vigorously executed. The

Supreme Court of the United States has declared that Congress can properly legislate upon the subject of polygamy; that religious belief cannot be accepted as a justification of an overt act made criminal by the law of the land; that while "Congress can make no law respecting an establishment of religion, or prohibiting the free exercise thereof," and is thus deprived by the Constitution of legislative power over mere religious opinions, it has power to interfere with acts and practices in violation of social duties, or subversive of good order. Yet polygamy still exists in Utah, notwithstanding the power of Congress, aided with the sanction of the highest legal tribunal in the land and the moral protest of the American people.

Double marriage, and incidentally the charge of bigamy, may arise in two classes of cases: first, where one marries relying upon the belief that a prior marriage has been dissolved by death, which is presumed on account of the prolonged absence of one of the parties, of whose whereabouts no tidings had been received for years, or in consequence of rumors, appearing to be well founded, under circumstances which justify such belief; second, where one marries relying upon the belief that a prior marriage has been dissolved by a judgment of divorce. Where absence is the ground of justification for a double marriage, the law declares how long such absence must continue before a second marriage is permitted. This period of time, as has been intimated, varies in

different States. Where a judgment of divorce is the ground of justification, a charge of bigamy may be sustained, either because the divorce is void or because it is valid. This proposition seems to involve a contradiction of terms; but in consequence of the peculiar provisions of law which exist upon the subject in a number of neighboring and contiguous States independent of each other and absolutely sovereign with regard to divorce legislation, the proposition is literally true. A single example will illustrate this apparent anomaly. In Maryland if a divorce is granted the court may in its discretion forbid the guilty party to marry during the lifetime of the innocent party, and a violation of the prohibition constitutes bigamy. So that a man or woman may be divorced and their marriage dissolved absolutely, and yet if the guilty party should wed contrary to the judgment of divorce, the act would be criminal. His guilt would be established as certainly as if the first marriage had never been dissolved, or as if the judgment of divorce, instead of being valid and binding, were void and of no validity.

It is not difficult to understand that if the divorce, which is relied upon to sustain the position that the first marriage has been dissolved, is not a valid divorce, the second marriage will be void, since the first still exists. But in some States, as in the case just referred to, the guilty party against whom a divorce has been obtained is forbidden again to marry during the lifetime of the innocent party without leave of

the court. In some States, as in Maryland, if this prohibition is violated, the act will constitute bigamy. In others it will invalidate the second marriage, and subject the offender to punishment, as for a contempt of court, though the act may not constitute bigamy in the strict sense of the word.

In considering the subject, therefore, it will be necessary to examine the crime of bigamy in a general way, and the penalties prescribed for the offense; then to inquire as to the consequences of marriage under belief that an absent husband or wife is dead; to investigate, in the next place, as to foreign divorces, when they will not be regarded as valid or binding; and lastly, to consider as to the prohibition against divorced persons marrying again. These subjects will be discussed in the order named. The consequences which follow the crime of bigamy are to be deplored, not only with respect to the question of the punishment prescribed for the offense, but as regards the sufferings of an innocent husband or wife, or blameless offspring, wholly without power to shield themselves against a crime which involves the legitimacy of their existence.

Bigamous marriages, under the law, are void, or in a few cases liable to be so declared. But in some States, by a humane provision of the legislature, the children of such marriages are made legitimate, and hence are spared a part of the odium and disgrace entailed by the conduct of parents, which, in the nature of things, it is not in their power to avert or control.

The pains and penalties prescribed for this offense are fine or imprisonment, or both, according to the place where the crime is committed.

In some States these penalties are more severe than in others. The heaviest punishment is in Arizona, Kentucky, Mississippi, and Tennessee. In the last-named State the penalty upon conviction is imprisonment not less than two nor more than twenty-one years. No fine is prescribed. In Kentucky the sentence may be not less than three nor more than nine years. In Mississippi the imprisonment shall not exceed ten years; no minimum period, however, is prescribed. In Arizona the maximum imprisonment is ten years; no minimum; and also a fine not exceeding two thousand dollars.

The lightest penalty may be imposed in Pennsylvania, New Hampshire, and Texas. In the first-named State the guilty party must pay a fine not exceeding one thousand dollars and undergo imprisonment, by solitary confinement at labor, not exceeding two years. There being no minimum fixed it is within the power of the court to make the punishment nominal. In Texas there is no fine, and the imprisonment cannot exceed three years, with no minimum term prescribed. In New Hampshire, if both fine and imprisonment are imposed; the fine shall not exceed five hundred dollars, and the imprisonment one year. If the sentence is simply imprisonment, it shall not exceed three years.

It has been observed that in some places the sins

of the parents, in cases of bigamy, are not visited upon the children, and the latter are declared to be legitimate, notwithstanding the marriage may be void. This is true in California and Dakota. In California and New York, where the husband or wife of the first marriage has been five years absent, and not known to be living in that time, or was generally reputed and believed by the party marrying again to be dead, the second marriage will be valid until its nullity is adjudged by a court of competent jurisdiction. In Iowa a bigamous marriage is void, but if the parties live together after the death of the former husband or wife, the second marriage will be valid.

But the mere fact that a person marries, while a former husband or wife is living, does not necessarily make the person marrying a second time guilty of the crime of bigamy, though it may render the second marriage void. In order to constitute bigamy, there must be disobedience of the law, which must result from a guilty mind, or a mind criminally ignorant. It may, and often does happen, that the second marriage is entered into in the full belief that the first has been dissolved by death, because the absent husband or wife may be reported dead, or may have remained absent so long that death is presumed. It is important to know, therefore, how long a person is bound to wait, without having received any tidings of an absent husband or wife, before contracting a second marriage, in order to escape the

pains and penalties of bigamy in case the long-lost absentee should suddenly appear and claim his marital rights. In some localities this is longer, in others shorter. This phase of double marriage, with respect to absence, will now be discussed.

CHAPTER XI.

MARRIAGE UNDER BELIEF THAT ABSENT HUSBAND OR WIFE IS DEAD.

"'This miller's wife,'
He said to Miriam, 'that you told me of,
Has she no fear that her first husband lives?'"

TENNYSON.

It sometimes happens, though rarely in this age of discovery and science, that a husband or wife has remained absent for years, without tidings of any sort as to his or her whereabouts and is reported to be dead, or, on account of such protracted silence, believed to be dead. Under such circumstances a second marriage may be contracted in good faith. But suppose, after the honeymoon is over, and children are born of the second marriage, the long-lost husband should suddenly make his appearance, robust and vigorous, insisting upon assuming the domestic relations which have been so long interrupted. The dramatic effect of such scenes afford subjects for the skill of the poet and dramatist. But after the strange and intense excitement which such a culmination is liable to produce, and more important than the sentiment and poetry suggested by the situation, the hard and difficult

question as to the legal status of two households presents itself. Whose wife is she? Is the second marriage valid? Is anybody guilty of bigamy, and liable to suffer, in addition to the pain and mortification which such a state of things must produce in a refined and sensitive nature, the disgrace of fine and imprisonment? The solution of this question will depend, first, upon how long the missing husband or wife has been absent without tidings as to his or her whereabouts; and second, in what part of the United States the second marriage was celebrated. The question of geography again presents itself. In some States, if the party has been absent long enough, the second marriage will be valid, and the returned wanderer will be barred altogether of his conjugal rights and privileges; while in other States the prolonged absence will protect the parties to the second marriage from the penalties incident upon the charge of bigamy. First, we shall examine as to whether the second marriage is criminal; second, as to whether it is valid. In some States, if the absence extends over a period of seven years there can be no charge of bigamy; in other States, and in fact in a majority, this is so after a period of five years. In two States, Florida and New Hampshire, three years are sufficient to shield the parties; while in Pennsylvania the limitation is two years, if after that period there is a rumor, in appearance well founded, that the absent one is dead. During this period of absence the party

marrying again must have received no tidings of the absent one, and the absence is computed from the date when tidings were last received. There are but few exceptions to this rule. In Arkansas, Kansas, Mississippi, and Missouri if the absentee remains continually out of the United States for five successive years, that fact will constitute a defense to the charge of bigamy; but if the missing one has been within the United States, the additional fact must be shown that no tidings or intelligence of such absentee had ever been received. In Arkansas, Kansas, and Mississippi the period of absence is limited to five years, while in Missouri the time is seven years. The seven-year period is adopted also in Maine, Maryland, Massachusetts, Minnesota, North Carolina, Oregon, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Wisconsin. In Florida, Iowa, and New Hampshire the period is three years; in Pennsylvania two years, with the qualification above noted; and in the remaining States and Territories the time is five years.

Thus it will be seen that, with respect to absence, a second marriage criminal in one part of the country might not be punishable at all in another part. A supposed widow at Des Moines, or Jacksonville, or Concord, after waiting three years without tidings of her absent husband, could marry without being subject to the penalties which are incident to the crime of bigamy, while if she happened to be in Atlanta, or Augusta, or Indianapolis, or in any State

requiring five years' absence, the consequences might be serious indeed. The importance of examining the particular law of the State where the parties reside, when a second marriage is contemplated, when there is no positive knowledge of the death of the first husband or wife, is apparent.

Most of the States have established a fixed period of limitation, after which time, if no tidings have ever been had, and the absent one is not known to be living during the whole of the time, the charge of bigamy cannot be sustained. In some few States, however, the rule is even more liberal, and where the absent one is generally reputed or believed to be dead, that fact, in case of a second marriage, will constitute a defense to the charge of bigamy, should the rumor of death prove to be false. In Delaware, if there has been prolonged absence, or other good ground to believe the former husband or wife dead, it is sufficient excuse. In New Hampshire it is enough to show that the absentee shall be reported and generally believed to be dead. In Pennsylvania the false rumor must have been "on appearance well founded"; while in Michigan, Tennessee, and Washington Territory it must appear that the accused had "good reason to believe" the absent one to be dead.

Having shown under what circumstances, in particular States, a second marriage will not be regarded as criminal, in law, though it may be void, it remains to be shown in what localities such second marriage

will be not only technically an innocent union, but an absolutely valid one. In Louisiana, after ten years' absence, without any news from the absentee, the husband or wife may marry, and such second marriage will be in all respects valid; and the absentee, upon his or her return, is free to marry again, but will not be restored to prior conjugal rights. In the State of Arkansas, however, if a husband or wife is abandoned, and the absentee goes out of the State and stays away five years, without being known to be living, the husband or wife so abandoned is at liberty, under such circumstances, to marry; and such second marriage will be legal. In California, Idaho, and Minnesota the second marriage is valid until it is annulled by a court of competent jurisdiction, and if no such proceedings are ever instituted, the second marriage will continue to be valid and binding. In Iowa, if the parties to the second marriage live together until the first husband or wife dies, then such subsequent marriage becomes valid from and after such death.

CHAPTER XII.

FOREIGN DIVORCES—PROHIBITION AS TO MARRIAGE OF DIVORCED PERSONS.

" If you would have the nuptial union last,
Let virtue be the bond that ties it fast."

MONOGAMY, as has been observed, is the rule of social life which prevails throughout the United States, save only in Utah, where, though polygamy is sanctioned by a local sect within its borders, the practice, nevertheless, is forbidden by the laws of Congress having jurisdiction over the Territory. The ease, however, with which divorces may be obtained in many States has induced persons to visit them and gain a residence for the sole purpose of dissolving the marriage bond, and, that object accomplished, they frequently return to their place of domicile, or drift into other parts of the country, and again take upon themselves marital obligations. Children born of these subsequent marriages frequently have to suffer with their parents by reason of the fact that the States, being independent sovereignties, so far as the law of marriage and divorce is concerned, have chosen to adopt a variety of laws upon the subject, differing radically; and by reason

of the haste, or eagerness, and often the secrecy with which divorces have been obtained away from home, it frequently happens that the first marriage, which was supposed to have been legally dissolved, was not dissolved at all. The result leads to all sorts of domestic woes, and the difficulties and embarrassments which grow out of matrimonial entanglements of this character bring only misery and disaster. If the first marriage has not been legally dissolved, then the party marrying again may be guilty of bigamy, and may suffer pains and penalties by way of fine or imprisonment or both, in addition to the wretchedness entailed upon others who may be wholly innocent. This result, as has been suggested, will sometimes follow even where the first marriage is legally dissolved; as, for instance, if the wife should succeed in obtaining a divorce in New York for the husband's wrong, and the husband should again marry within the State without waiting for his divorced wife to marry, and without receiving a certificate of good behavior from the court in which the divorce was obtained, after a period of five years, and procuring the decree to be modified so as to permit such guilty husband to marry again. This second marriage in New York is void. If, however, the guilty husband went out of the State and got married, the legality of the second marriage would depend upon the law of the State where it took place. If the ceremony was performed at Leavenworth or Topeka, or anywhere in the State of Kansas, it might prove

unfortunate when it was discovered that by the law of that State, in order to successfully defend the charge of bigamy, the accused would have to show that, by the decree of divorce dissolving the first marriage in New York, he was not, by the decree or by the law of that State, prohibited from marrying again, or, if so prohibited, that the time of such disability had expired. If the second marriage happened to be in Kentucky, then, under the bigamy statute in that State, a divorced person, so marrying, would have to show that he had been permitted again to marry. If the second alliance was contracted in the city of Boston or elsewhere in the State of Massachusetts within two years after the first divorce, it might cause the groom great anxiety, in case bigamy was charged, to learn that, in order to successfully defend himself, it will not be sufficient to show that he had been legally divorced, but that he was not the guilty cause of such divorce. The same result would follow if the second wedding took place in St. Paul or elsewhere in Minnesota, or anywhere among the orange blossoms of Florida, save only that in these States there seems to be no period of limitation as in Massachusetts. In Missouri a divorced person, marrying again, must show that the decree of divorce first obtained contained no provision whereby he was forbidden to marry.

A more perplexing state of affairs will follow if the first divorce was granted in Nebraska, and afterwards the party who procured the divorce and was

not the guilty party should again marry. Under the laws of that State neither party is allowed to marry until six months after the divorce has been granted, because a party has six months in which to appeal, where a decree of divorce is obtained against him or her. So that a person obtaining a divorce in Omaha, or elsewhere in Nebraska, though innocent of the charge on which the divorce was sought, is not allowed to marry until the defeated party has had an opportunity to appeal from the judgment dissolving the marriage. The same rule applies in Maine, perhaps, where it must be shown that the party has been legally and *finally* divorced. This doubtless means that it must appear that the divorce is final, for the reason that no appeal has been taken or can be taken from the decree. If the first marriage was dissolved in New Orleans, or elsewhere in Louisiana, if the divorced wife, though the innocent party, married again without waiting ten months, she might incur difficulties and complications in view of the law of that State, which declares that the wife shall not be at liberty to contract another marriage until ten months after the dissolution of her preceding marriage. In this period of limitation, which seems to be confined to the woman, the subtle refinement of the civil code and Code Napoleon anticipates the possibility of a child born after the second wedding, which properly might be the fruits of the first.

A singular complication would arise if the man

who got the divorce lived at Wilmington, or Newcastle, or elsewhere, in the State of Delaware, and was entitled to a divorce under the laws of Delaware. Perhaps, in order to avoid scandal, he deemed it wise to go out of the State and get the divorce. It may be that his wife defended the suit, and that the court had jurisdiction over both parties, and granted the divorce to the husband. With a decree dissolving the marriage in his possession, granted by a court of competent jurisdiction, after the wife had been fully heard, the husband returns to Delaware and settles in another part of the State from that in which he formerly resided. He files away the decree with his title-deeds and other valuable papers ; and, perhaps, after the lapse of several years he again marries, in good faith believing he had a right to do so. It would indeed be a source of mortification and chagrin if he should discover, when too late, that his first marriage remained still undissolved in Delaware, notwithstanding his foreign divorce, because the Delaware law declares that when an inhabitant of that State goes out of it to obtain a divorce for any cause which arose in Delaware, or for any cause not authorized by its laws, the divorce so obtained shall not operate in Delaware, and shall be of no force or effect there. This provision of the Delaware statute may be unconstitutional, but the embarrassment of testing that question remains.

In all other cases, if the foreign tribunal had jurisdiction of both the parties and the subject-matter,

such foreign divorce will be valid. This rule applies also in Maine and Massachusetts; but in the latter, if the court in the State where the divorce was granted had jurisdiction over both husband and wife, as well as over the subject-matter,—that is, if the parties both appeared in court and tried the cause, so that there was no default as to either, the foreign divorce would be upheld in Massachusetts, but not otherwise.

In New York the rule is that where a party has been divorced for a violation of the bridal vow, such guilty person is not only forbidden again to marry during the lifetime of the innocent party, without leave of the court which granted the divorce, but such subsequent marriage, if performed within New York State, is void. Nor is it material where the guilty party was divorced, whether within the State or out of it.

The importance, therefore, of the rule which prevails in each particular State or Territory on this subject becomes apparent, in order that the geography of the situation may be fully understood, so that blunders which may be disastrous may be avoided.

One of the worst abuses in divorce legislation, and one which has afforded greater opportunity for injustice and misery than perhaps any other, is that which authorizes a resident of one State to sue for a divorce where the defendant resides in another. A summons is printed six or eight times in some

weekly paper, published, it may be, in a distant county, having within it no city or town of sufficient population to support a daily paper. It may be the absent defendant is wholly unaware that proceedings to dissolve his or her marriage are pending. If the only means of communicating that fact is the publication of a summons in an obscure country paper, published in a distant State, in some remote county, it will be impossible for the defendant to know any thing about the suit. Perhaps the defendant is designedly absent, it being understood that he or she is to know nothing about the suit until the decree dissolving marriage has been obtained. After the period of publication expires, the plaintiff, in the absence of the defendant, who remains away, either collusively or through ignorance that a divorce is being sought, makes such proofs as are required, and upon this evidence a decree is made dissolving the marriage. Such proceedings practically operate to make divorce free. The legislation which suffers this state of things encourages fraud and immorality, and renders the sacred obligations assumed at the altar a mere temporary arrangement, to be terminated and dissolved when the convenience or inclination of the parties desires. In morals this is an evil scarcely less detestable than that suggested by polygamy or polyandry. A judgment thus obtained, while it may be sustained in some States, will be regarded in others as absolutely void and of no binding force or effect whatever. This latter view

has been adopted in New York by the highest tribunal in the State. It is based upon the clearest principles of law, and is in harmony with every doctrine of morality. No court can make a judgment against a man who is absent from the State where the judgment was rendered, and who never appeared in the suit. Property within the State may be seized and sold during the absence of the owner; but so far as a personal obligation is concerned, no binding judgment can be rendered against an individual who is absent from the jurisdiction and never appears in the case. How then can the most sacred of all personal obligations be dissolved by a judgment rendered against one who never was within the jurisdiction of the court seeking to decree such a dissolution.

This principle is illustrated in a case where a woman went from New York to Ohio, and got a divorce from her husband under the Ohio laws. He being absent, the papers in the case were served upon him by publication in a newspaper for a specified period. When he learned that the Ohio court had granted the petition of his wife by dissolving the marriage, and taking it for granted that the Ohio divorce was valid, he married in New York, and was convicted of bigamy. He pleaded the Ohio judgment, but learned that the Ohio court could not make a judgment against a person who was never in Ohio and was not even represented there. Without referring to the merits of the case just cited, it cannot be said that this rule can work a hardship or result in injury

to an innocent party. If a married man never learns that he has been divorced, he will not attempt a second marriage. If he attempts a second marriage, relying on a judgment dissolving the first, granted in his absence, in a State he was never in, he acts at his peril. Such divorces are obtained either with or without the knowledge of the absentee. If with such knowledge, then it is fair to presume that the defendant had an object in not appearing and defending the suit. If the plaintiff was entitled to the divorce, what fair reason could be assigned for going into a distant State to procure it, when the courts at home are always open? If the plaintiff is not entitled to it, the farther away from home the application is made, the better will be the prospect of success, and the less likelihood of collusion being discovered. Foreign divorces against non-residents afford the most convenient mode of concealing collusion between the parties; and a divorce obtained by collusion is a fraud upon the law and is contrary to every principle of sound morality.

Every proper influence should be brought to bear to expose a system which sanctions one-sided divorces, procured by publication, against absent defendants; and every effort should be put forth to bring about the abolition of all laws whereby they are rendered possible. They are not legal or valid judgments which are at all binding on the absentee, and are not, therefore, entitled under the Constitution to full faith and credit in any State; and the

Court of Appeals of the State of New York, in so declaring, have rendered a service to society and good government. As has been truly said by the Reverend Heber Newton, the esteemed rector of All Souls Church in the City of New York, in referring to this subject: "We need to feed a public sentiment which will lift marriage above the shameless huckstering of that Vanity Fair which deals in the bodies and souls of women. We need to hallow in the minds of our young people the dream of love, and to guide them more carefully amid the currents which drift them into wedlock only to strand them upon the shoals of divorce."

CHAPTER XIII.

PROHIBITION AS TO MARRIAGE OF DIVORCED PERSONS FURTHER CONSIDERED.

"Never a tear bedims the eye,
That time and patience will not dry;
Never a lip is curved with pain,
That can't be kissed into smiles again."

—HARTE.

FROM what has been said with regard to double marriage, it is clear that the charge of bigamy may arise where the first marriage has not been dissolved, as well as in the class of cases where it has been. The somewhat novel postulate is established, in view of the peculiarity of the different laws upon the subject, that a person may commit bigamy whether a prior divorce is valid or invalid.

It has been shown that a foreign divorce may be worthless, illegal, and void, having been rendered against a person who was absent from the State or for other causes; and hence such divorce can afford no protection where the party marries again. It has also been observed that some of the divorce laws in the United States are so framed that a guilty party, against whom it is procured, will be forbidden again to marry during the lifetime of the inno-

cent party, or for a specified period thereafter. Under such circumstances, where the divorce is in every respect legal and binding, and operates to dissolve the first marriage absolutely, a guilty party who assumes a second marriage may nevertheless be punished, and incur the penalties prescribed for the crime of bigamy, and may discover also that his second marriage is void. In the one case he suffers because the divorce is worthless; in the other he is punished by reason of the fact that the divorce is valid. In the first instance it is a sin of omission; in the second, a sin of commission. He omits to take the steps necessary to make the divorce legal and binding by appearing in the action and submitting himself to the jurisdiction, in one case, and in the other he commits the sin of breaking the law which prohibits him from marrying while the innocent party to the divorce is alive. The effect of such prohibition will now be considered.

If one has been guilty of a marital wrong, and for that cause divorced, the question as to whether such person will be permitted again to marry while the first husband or wife is living, and the validity of such subsequent marriage, will depend upon the law of the place where the divorce was obtained or where the second marriage is solemnized.

In some States the law simply prohibits the guilty party from marrying again, but makes no provision as to whether such subsequent marriage shall be void. If there is simply a prohibition imposing a

penalty, while a guilty person might incur the penalty, it is a question whether the second marriage would or would not be sustained as valid. But in New York the law not only prohibits the guilty party from marrying again during the lifetime of the former husband or wife, or without leave of the court granting the divorce, but declares that such subsequent marriage shall be absolutely void. If, therefore, a person prohibited from marrying under such circumstances should nevertheless attempt to wed, the result might prove disastrous, not only with respect to the penalty but also with respect to the validity of the second marriage. Should proceedings for bigamy be instituted, a conviction would entail years of imprisonment or a fine, since the penalty prescribed sometimes embraces both fine and imprisonment. But should the individual be so fortunate as to escape such an ordeal, yet the subsequent marriage would be invalid ; and should it transpire that children were born of the union, after the death of either parent, the subject of legitimacy of such offspring and their right of inheritance, if the subject of controversy, might result in disaster entailing disappointment and disgrace, with respect both to fortune and family honor.

A single illustration will suffice to show the importance of a thorough knowledge as to this branch of the subject, in order to avoid a world of annoyance and vexation, because there are States and countries in which an individual, though divorced

for his or her inconstancy, may, nevertheless, lawfully marry again, and such second marriage will be in every respect legal and valid. As has been said, in the State of New York the law not only forbids the guilty party to marry again during the lifetime of the innocent party, without leave of the court, but declares that a subsequent marriage so contracted shall be void. The punishment is not confined merely to a prohibition, a violation of which might be construed merely as a contempt of court, but extends to the subsequent union, and invalidates it; thus rendering the parties liable to the pains and penalties prescribed for bigamy, and depriving their offspring of the rights of inheritance. The declaration is broad and sweeping that no second or subsequent marriage shall be contracted by any person during the lifetime of any former husband or wife, unless the first marriage shall have been dissolved for some cause other than the adultery of such person; or unless the former husband or wife shall have been finally sentenced to imprisonment for life, except in a case where the husband or wife of the first marriage shall have been continuously absent five years, and not known by the person subsequently marrying to be living during that time. In the latter case the second marriage is void only from the time when it is so declared by the court in a suit to have it annulled.

It follows, therefore, that if a person has been unfaithful to the bridal vow, and for that cause

divorced, no matter where, whether in the State of New York or out of it, and attempts marriage a second time, while the former wife is alive, in the State of New York, without taking the precaution to have the wedding in Trenton or Jersey City or elsewhere in New Jersey, where a guilty person, under such circumstances, is allowed to marry again, his mistake in geography would be fatal; unless cured by being married over again in a State where a guilty divorced person may lawfully wed a second time. And in seeking a safe place in which to marry, such divorced person would be wise to keep out of Alabama, Florida, Kansas, Kentucky, Massachusetts, or Missouri, as will presently appear by a reference to the laws of those States with regard to bigamy or polygamy.

In New York, however, if the guilty party has been adjudged to pay alimony, neither his second marriage, nor that of the innocent party, will release him from the obligation.

Even a stranger, residing abroad or in another State, committing this error in New York, could not well plead his foreign domicile, since the law of the place where the matrimonial contract was attempted must govern in deciding whether such a contract ever had any validity. If there was no marriage contract in New York, where the marriage was attempted, and the parties are not husband and wife there, they certainly do not become such by merely crossing the ocean or passing beyond a State line.

Such, at least, is the law as at present interpreted by the highest courts of the State of New York. The tribunals, however, of the foreign State or country which is the domicile of the parties, or of one of them, and whither they go to reside, being absolutely sovereign, might choose to sustain the validity of such a marriage; but, to do so, they would be driven to the inconsistent and illogical position that a matrimonial contract which never had any existence or validity in the place where it was sought to be performed, suddenly springs into existence and becomes valid as soon as the parties leave and enter another State or country. This position presents, also, the anomaly of a marriage, the validity of which would be defined by geographical limitations, since, while it would be void in one State, it might be held valid in another. Should the sovereignties giving rise to the conflict happen to be remote, the legal status of the couple in the intermediate and contiguous States would, until solved by each respectively, remain an enigma and a riddle.

The prohibition, however, which forbids a divorced guilty party from marrying again can have no force outside of the State or country establishing such prohibition. The mistake, therefore, can readily be avoided or cured by having the ceremony performed in a State or country where no such prohibition exists. But even this rule has a peculiar bearing in Kansas, where the law provides that one marrying out of the State, under circumstances which would

constitute bigamy in Kansas, becomes liable for that crime, if he afterwards comes into that State.

It will be important, in view of these facts, to note that in Alabama, Kentucky, and Missouri a divorced guilty party marrying a second time during the lifetime of the first husband or wife, in order to avoid a charge of bigamy must show that the court granting the divorce also granted leave to marry again. In Florida, a person who is the guilty cause of the divorce, and marries during the lifetime of a former husband or wife, is guilty of bigamy. In Kansas, the guilty party, in order to defend a charge of bigamy, must show that he was not prohibited from marrying again by the decree of divorce, or that the period of such disability had expired.

Thus it will appear what rules have been adopted in some of the States with regard to what will constitute a defence to the charge of bigamy, in case the divorce relied upon was granted in another State. It remains to show what provisions of law exist which forbid explicitly divorced persons marrying again. In many States the laws remain silent upon this point; and where there is no direct prohibition, divorced persons may marry again. But in eleven States, namely, Alabama, Indiana, Kansas, Maine, Maryland, Massachusetts, Missouri, New York, Pennsylvania, Vermont, and Virginia there are special provisions upon the subject of re-marriage; and in some of them the future marital rights of the parties are lodged with the court granting the

divorce. In Alabama, the court directs in the decree whether the guilty party shall marry again. In Indiana, if the divorce has been procured by publication against a non-resident of the State, the person procuring it shall not marry again within two years. In Kansas, neither party shall marry within six months after the granting of the divorce, nor while an appeal from the judgment of divorce is pending. Violation of this prohibition constitutes bigamy. In Maine the innocent party shall not marry within two years after final decree without leave of court ; but the guilty party shall not marry within two years, nor afterwards without leave of court. In Maryland, the court may decree that guilty party shall not marry during the life of innocent party, and a violation of the prohibition constitutes bigamy. In Massachusetts, an innocent party may marry at once, but the guilty party not until after two years. In Missouri, a guilty party is forbidden to marry for five years, unless the disability is removed by the court. In New York, a guilty party shall not marry during life of innocent party, unless, after five years, and after re-marriage of innocent party, upon showing uniformly good conduct during that period, the court granting the divorce modifies the decree giving leave to marry. A violation of this rule renders the second marriage void. In Pennsylvania, a guilty party cannot marry the person with whom the crime was committed until after death of innocent party. In Vermont, a guilty party cannot

marry, except the party from whom the divorce was obtained, until three years after decree, unless the innocent party dies within that time. Violation of this rule is punishable by imprisonment, not less than one nor more than five years. In Virginia, the court may in its discretion restrain the guilty party from marrying again.

In the midst of these complications, what comfort is to be derived by appealing to the provision of the United States Constitution, which declares that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State"? The position of the guilty person divorced by the law of a State which forbids him again to marry, and who marries in another State in violation of the judgment which prohibits him, cannot plead in his defence the judgment which he has violated, and ask the court to give to it full faith and credit. If the divorce was obtained in Maine in favor of the wife for the husband's guilt, the judgment would forbid him to marry without leave of the court. If the husband should leave Maine and come into New York and marry in violation of the Maine judgment, it would be disastrous for him to plead that judgment and ask the court to give full faith and credit to its terms and conditions. If, however, the divorce against him was obtained in Pennsylvania, where there is no objection to his contracting a second marriage (provided he does not marry his paramour), and comes to New York to

contract the second marriage, he violates not the law of Pennsylvania nor the judgment of its court, but transgresses the law of New York. These illustrations are sufficient to show the dangers and perplexities growing out of the lack of harmony existing.

CHAPTER XIV.

WHAT CONSTITUTES A VALID MARRIAGE?

What a delicious breath marriage sends forth ;
The violet bed 's not sweeter. Honest wedlock
Is like a banqueting house, built in a garden,
On which the Spring's chaste flowers take delight
To cast their modest odors.

MIDDLETON.

THIS inquiry as to what constitutes a valid marriage is of the highest importance, as it involves, oftentimes, the most serious and far-reaching consequences. In view of its importance, it should be clearly and uniformly settled and easily answered. And yet the doubtful and uncertain provisions of law at present existing in some of the States and Territories, upon the subject, render it one of the most perplexing and difficult problems in our social economy. What would be a perfectly good and valid marriage if performed in New York, might be absolutely void if performed in Massachusetts. So that the social status of the family, and the property rights incidental to the married state, will depend, not upon any particular law of moral ethics, but upon a question of geography.

Marriage is an institution as old as the race,

having existed since the creation of mankind. The right of marriage, therefore, is older than the law, and older than the state, since it existed before men began to form artificial rules and regulations for their government and mutual protection. It is an inherent right derived from that condition which prescribed the existence of sex, whereby the race embraced only men and women. It is a right which is not derived from any local precept or particular legislation, because it existed of necessity before legislators came into being, and must continue while mankind exists under present conditions. It is not forbidden by the code of morals or religious creed of any people, nor by divine revelation in the Scriptures of the Old and New Testament. It is a right inherent in man from the very nature of his being, and cannot be conferred by human laws. Society may prescribe the mode in which it may be celebrated, and establish rules whereby the evidence of it may be preserved, but society cannot confer the right of marriage. Hence it cannot abolish a right which it cannot confer. To forbid marriage would be wrong in morals. And it is a familiar maxim of government that that which is morally wrong can never be politically right.

These observations are self-evident. They embody a fundamental truth which one would suppose would be universally recognized in every intelligent community. Yet, strange as it may seem, courts without express authority from the Legislature,

assuming to extend their judicial functions, have assumed to deny this right in passing judgment upon the conduct of their fellow-men, who, in good faith, have taken upon themselves the duties and obligations which attach to the relation of husband and wife, and have presumed to unmake the most sacred and solemn contract after it had been consummated with due solemnity in accordance with religious observances and customs, because some details of no essential importance had not been complied with when the contract was made. In the absence of some clear and positive provision of law, where does a court derive the right to say that a contract of marriage, solemnly and publicly made by a man and woman in good faith, is no marriage? Where does one man get the power to declare that another man's children are illegitimate, and his wife is only a mistress, when there is no statute declaring the marriage void? Yet this power has been assumed, and the right of a man and a woman to marry themselves has been denied in Massachusetts, notwithstanding the fact that the Legislature of that State never passed any law declaring that where parties marry themselves the marriage shall be void. The circumstances of this case will be referred to later.

What remains to be said in this chapter has no application or reference to Quaker marriages. That body of useful and peaceful citizens are everywhere accorded the right to contract marriage in accordance

with their usages and customs, and Quaker marriages are regarded as valid throughout Christendom.

With these preliminary observations which serve to foreshadow some of the difficulties which beset the inquiry, we shall proceed to examine the question. In some parts of the country marriage may be consummated in two ways, while in other localities but one mode is recognized. These are, first, where parties marry themselves, and make their own contract without the aid or assistance of minister, priest, or magistrate standing by to give assent and pronounce the union valid. The man and the woman, if physically and mentally capable, may bind themselves in wedlock and tie the knot which makes them man and wife. The other mode necessitates the presence of a minister, priest, or magistrate to solemnize the marriage, who must pronounce the bride and groom to be husband and wife. In other words, in some States parties are allowed to marry themselves, while in others this right is denied, and they must be married by a third party, who shall perform the ceremony.

With regard to this right of men and women to marry themselves, the States are again divided into two classes: first, those in which the right is recognized and declared to exist, until taken away expressly by the act of the legislature; second, those States in which it is claimed that where the legislature prescribes that marriage shall be celebrated by a third person, the right to marry without

a third person is taken away by implication, and that it is not necessary for the statute to declare marriage by the parties to be void.

This distinction should be borne in mind to avoid confusion; because in every State and Territory excepting only South Carolina, provision is made for celebrating marriage by a minister, priest, or magistrate, and marriage licenses are frequently required, and in some cases it is necessary to publish the banns. But in a large majority of the States these regulations are regarded as directory and not compulsory, and while persons who do not conform to them may be punished, yet their right to marry themselves is not taken away or destroyed, and such marriages will be valid, unless the statute distinctly declares that such marriages shall be void.

Those States in which it is said that the right of persons to marry themselves may be taken away by implication, and without positive words in the statute, are Maine, Maryland, Massachusetts, North Carolina, and Tennessee. In Connecticut, Delaware, and Kentucky, the right of persons to marry themselves is taken away by express provisions of law.

In these eight States, therefore, parties are not allowed to marry themselves, but there must be a ceremony performed by a third person, in order to make the contract valid in the eye of the law. The character of this third person, authorized to solemnize marriage, varies also in particular States. In Maryland, for example, down to 1886, no person but

an ordained minister of the gospel could perform the ceremony, and this rule seems to prevail at the present time. In Massachusetts a justice of the peace may solemnize marriage as well as an ordained minister of the gospel, but the minister must reside in Massachusetts in order to be qualified to act. This is true of Connecticut, where the law requires an ordained or licensed clergyman belonging to Connecticut. The same rule exists in North Carolina, except that in that State the law does not expressly declare that the minister must reside within the State, but there must be at least three witnesses to the ceremony. In North Carolina, therefore, the absence of one witness might operate to disinherit children and destroy their legitimacy. In Tennessee the right to solemnize marriage is extended to Jewish rabbis having the care of souls, justices of the peace, judges, and chancellors in the State, as well as "regular" ministers of the gospel, as they are called. What a "regular" minister of the gospel is, the bride and groom must find out at their peril. Delaware extends the privilege to the mayors of the cities of Wilmington and New Castle, as well as to "preachers of the gospel ordained or appointed according to the rules of the church to which they belong." In Kentucky judges of the county court and such justices of the peace as the county judge may authorize, may solemnize marriage, as well as ministers or priests of any denomination. But unless such minister or priest is licensed by the

courty court for that purpose, and gives a bond to the commonwealth of Kentucky in the penal sum of two thousand dollars, he is not authorized to officiate at a wedding. Maine is the only State in the Union in which a woman is authorized to officiate at a wedding as celebrant. There has never been a wedding without a woman, it is true, but in Maine a woman may perform the ceremony in like manner as a justice of the peace, ordained minister, or licensed preacher, provided she has been commissioned and appointed by the Governor of Maine for that purpose.

There are a large number of States, however, which recognize the right of a man and woman to marry themselves until that right is expressly taken away by the legislature, notwithstanding the fact that the law declares that a minister, priest, or magistrate shall perform the ceremony. This is the rule in Alabama, California, Dakota, Georgia, Idaho, Illinois, Iowa, Michigan, Minnesota, Mississippi, Missouri, New York, Ohio, Pennsylvania, and South Carolina. In the remainder of the States and Territories the question has not yet been finally settled. The view that the right of individuals to marry themselves exists till abrogated by express legislation, and cannot be taken away by mere implication, has been adopted by the highest court in the land, and the Supreme Court of the United States stands committed to this simple and righteous principle.

Thus it appears that, while every State, except South Carolina, has prescribed a particular mode in

which individuals may marry, in a large majority of them a man and a woman, without going before a minister or magistrate, with no previous public notice, with no form or ceremony, civil or religious, and merely by words of the present tense, may contract matrimony. In a large geographical area covered by the body of States grouped above, marriage, so far as the law is concerned, is simply a civil contract, which requires nothing but the agreement of the parties, with an intention that that agreement shall of itself constitute the marriage. The bride and groom may express the agreement by parole, they may signify it by whatever ceremony their whim, or their taste, or their religious belief may dictate. It is the agreement itself, not the form in which it is couched, which constitutes the contract. In California, Dakota, and Pennsylvania the agreement may be put in writing, signed by the bride and groom, and witnessed, as a deed for a piece of land is signed and witnessed, and put on record like a deed. In the State of New York, however, it has been decided by the highest court that "a man and a woman, without going before a minister or magistrate, without the presence of any person as a witness, with no previous public notice given, with no form or ceremony, civil or religious, and with no record or written evidence of the act, and merely by words of the present, may contract matrimony."

Certainly a marriage without witnesses or written evidence is very imprudent, unwise, and foolish

in this age of the world when illiteracy is at a minimum; and in view of the fact that, after the death of one of the parties, it may be absolutely impossible to establish it by proof. Nevertheless, the courts recognize the existence of the right as a fundamental principle.

The only further observation in this connection is to point out that the marriage, in order to be valid, must be a contract or agreement in words of the present tense. I now take this woman whom I hold by the hand to be my lawful wedded wife. I now take this man to be my lawful husband. These are words of the present, and constitute a valid contract and agreement. It won't do to say I *will* take. That clearly is simply an engagement or betrothal, since it implies that, at some future time, the individual will take upon himself the marriage vow. But where the language is in the present tense, I take, or I now take, the contract is entered into and is binding, provided it is mutual. Both must agree, since the contract of marriage, like other contracts, is one which it requires two to make. Keeping in view the words of the contract, which distinguish marriage from betrothal, and being informed of the State or Territory where the contract is made, one may readily solve the problem as to what constitutes a valid marriage.

This agreement must be free and voluntary. The consent of the parties is the vital part of the ceremony. The inquiry which is put to the bride

and groom by the celebrant, while solemnizing the marriage, is not a mere form. When the bride is asked "do you take this man to be your wedded husband, to have and to hold from this day forward, for better for worse, for richer, for poorer, in sickness and in health, to love and to cherish, till death do you part," the response must be voluntary and unequivocal. An affirmative answer from each of the contracting parties respectively, is necessary to bind them in holy wedlock. A negative answer from either, makes an end of the matter, in spite all that the celebrant, or others may do or say. The plot of many a novel is made to turn upon the critical moment when the bride is led to the altar, forced by the will or ambition of parents, or enmeshed by a web of circumstances which seem to render any means of escape for the unwilling heroine impossible. The remedy, however, is involved in the response which the bride must make, and which cannot be made for her. If there is a refusal to enter into the contract, all the plans, devices, and designs to which cunning or ingenuity may resort, will fail utterly. Contrary to all precedent, an American girl assumed the responsibility of exercising this right, which belonged to her, and determined to wed the man of her own choosing. She firmly declined at the critical moment, in the midst of the ceremony, to have her parents choose a husband for her. The parties resided in Michigan. The parents succeeded in compelling their child to accept the hand of a man

whom they determined she should wed. She was obliged from sheer necessity to engage herself to him, and he led her to the altar. When the ceremony was being performed, however, her nature revolted at the thought of becoming the wife of one whom it was impossible for her to love, and who never could win her affections. Her womanhood asserted itself, and she boldly declared to the magistrate that "if he tied the knot forty times, it would not stay tied." She told him she did not like the man and would not live with him. She was directed, however to stand up, that the ceremony might be proceeded with. This she was obliged to do, but when she was asked "do you take this man to be your wedded husband?" she declared bluntly, "No, I won't!" And the only response to the inquiries which required an affirmative reply was emphatically in the negative. The celebrant however, proceeded with the ceremony, and nothing daunted at the rebellion he had witnessed on the part of one of the non-contracting party, nevertheless pronounced the couple husband and wife. The bride escaped and ran away on the following day. The matter came before the courts, and the lower tribunals held that, notwithstanding there had been no mutual vows, it was nevertheless a legal marriage. This view, however, was rejected by the highest court in Michigan upon the ground that marriage is a contract which must of necessity be mutual, and in which both parties must concur at the same instant,

and in the absence of such consent, and the woman having positively refused to contract, there was no marriage.

It is fortunate that this novel circumstance happened in Michigan and not in Arkansas. The difference in geography becomes important when the law of Arkansas upon the subject of forced marriages is considered. It declares that whoever "shall take unlawfully, and against her will, any woman, and by force, duress, or menace compel her to marry him, or to marry any other person, shall suffer death."

The circumstances of the Massachusetts case below referred to will serve to illustrate the results of courts trying to make law for the legislature, and assuming, by an arbitrary exercise of opinion, to unmake and impair a contract more sacred and important in its consequences than any which it is within the power of man to make, thereby annulling, with a stroke of the pen, rights dearer than life itself, whereby children are deprived of their birthright, and the sanctity and security of the domestic relations assailed and destroyed. The facts of this remarkable case are as follows.

A clergyman of the denomination known as "Second Adventists," while preaching at Worcester, Massachusetts, became engaged to a lady in the congregation. Having learned that it was necessary to file a notice of his intention to wed, in the office of the city clerk of Worcester and procure from him

a marriage license, the clergyman did so, complying with every formality in this respect. Afterwards, on the morning of the 12th of July, 1879, the wedding took place at Advent Chapel, in Worcester, under somewhat novel circumstances. The bridegroom occupied the pulpit that morning. The congregation assembled as usual, and the minister gave out the text and delivered an eloquent sermon on repentance. He then read the first five verses of the twentieth chapter of Matthew, and having finished, descended from the pulpit into the aisle, the congregation watching with intense interest. The bride then arose, and advancing from her pew, walked up the aisle, reading from the twentieth chapter of Matthew, commencing where the bridegroom had finished, and continued from the sixth to the tenth verse. The bride and groom then joined hands, and the latter, raising his eyes reverently, said, with great dignity: "In the presence of God and of these witnesses, I now take this woman whom I hold by the right hand to be my lawful wedded wife, to love and to cherish till the coming of our Lord Jesus Christ, or till death do us part." Whereupon the bride, in clear, silvery tones, responded: "And I now take this man to be my lawfully wedded husband, to love, reverence, and obey him until the Lord himself shall descend from heaven with a shout, and the voice of the archangel, and with the trumpet of God, or till death shall us sever." The pair then knelt before the congregation, and the

groom offered a prayer, and thus ended the unusual ceremony.

The bride and groom afterwards filled up the marriage certificate, upon which was endorsed a statement signed by both, that they had been married to each other by mutual public vows.

The happy couple continued thereafter to live together as husband and wife, minding their own affairs, and little dreaming that any individual would ever assume to declare that they were not married, and were not man and wife. After a time, however, the matter was brought before the courts, and the question as to the validity of the marriage was involved. Away back in 1646 there was a law passed in Massachusetts Bay forbidding persons to join themselves in marriage but before some magistrate or person authorized to solemnize marriage. The law, however, while it forbade persons to marry themselves, did not declare that if persons should assume to do so the marriage should be void. No such provision was contained in any statute of the State, from colonial times down to the time of the novel marriage of the Advent clergyman.

Notwithstanding this fact, the highest court in Massachusetts decided that the right of persons to marry themselves, though not expressly abolished by the legislature, was taken away by *necessary implication*, and upon this narrow theory, that a right which the legislature could not confer was destroyed by "inference," the court was satisfied to base a

judgment which struck a blow at the conjugal happiness of others, which operated to destroy rights which it was not in the power of the court to bestow. If the clergyman had been a Quaker, the court would not have dared to ruthlessly destroy his domestic relations, but it chanced that he believed in the second advent of the Messiah.

It has been shown that marriage is a contract which can be made either by the parties themselves, or for the parties by a clergyman or magistrate. But it has been universally conceded that there must be a contract of marriage existing in order to make the parties husband and wife. Merely living together in the absence of any such agreement renders the union meretricious, not in any sense matrimonial. A mistress or concubine up to the present time has never been accorded the rights and privileges of a wife, and it has come to be a maxim that mere concubinage can never drift into matrimony, nor become wedlock by lapse of time. This rule, however, has been reversed in Arizona, by a law passed February 28, 1887, whereby it is declared that parties who have lived together as husband and wife and continued to do so for a year, shall be considered as having been legally married; and if either die within the year the same result follows, and the children are declared legitimate. Within the geographical limits of Arizona, therefore, if nowhere else on the globe, it is possible for a man and woman to become husband and wife without

getting married at all. Another strange phase of this very complex and intricate subject: by lapse of time concubinage becomes matrimony, and the union meretricious in its inception becomes legal. What a wonderful variety of matrimonial complications is exhibited within the territory of the United States, in a community owning allegiance to one flag and dwelling together as one nation! In one part of the country the law is so framed that the parties, after trying to get married, and after taking upon themselves the most solemn vows, were barred of their marital rights because a justice of the peace was not present to go over the form; while in another locality the parties find themselves husband and wife without making any contract at all, and without any form or ceremony of any kind. Uncertainty, mystery, complications, perplexities. And yet, who will condemn the people of Arizona for protecting the rights and interests of the innocent children born within the territory under circumstances which left them without family ties or associations; deprived of the rights of inheritance, for causes which it would be impossible for them to alter or control.

CHAPTER XV.

THE MARRIAGE LICENSE.

" Oh how many torments lie in the small circle of a wedding-ring."

COLLEY CIBBER.

In some parts of the country more details and preliminaries are required than in others, as a condition preparatory to embarking upon the conjugal sea. In many instances, however, these preliminaries though requisite are not absolutely essential, or necessary, in order to secure the validity of the marriage. There seems to be an entire lack of unity, so far as these requirements are concerned; but, since they must be complied with in many instances under penalty, such compliance becomes a matter of serious importance, so far as the licensing officials and celebrant are concerned. The parties about to wed, the officer whose duty it is to issue the marriage license, and the minister or magistrate who shall officiate at the nuptials, are all interested to avoid error, when error may mean fine or imprisonment. Clergymen and officials also take a just pride in keeping within the law, not only to avoid liability and complications which may arise from

ignorance or failure to observe such formalities as may be prescribed, but as matter of professional punctilio and correct methods. Knowledge concerning this branch of the subject may be useful, also, in giving a clue to where this kind of information may readily be obtained in various parts of the country. It can be resorted to in tracing identity and relationships among distant kindred, and may become useful in many ways to ascertain and fix rights of inheritance after the lapse of years, when other data have been lost or forgotten. Full names of bride and groom and of their parents, and oftentimes the maiden names of the mothers of both are required to be filed with the official, when the license is granted.

A marriage license is required in every State and Territory throughout the United States, save only in Michigan, Montana, New Jersey, New York, New Mexico, South Carolina, and Wisconsin. In Delaware and Ohio, however, if the banns have been duly published, it will not be necessary to procure a license, as the public notice given out in church on Sunday, according to the old English custom, is deemed sufficient to guard against unlawful or forbidden marriages. In some parts of New England—namely, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, the proper document is styled a certificate, and is issued by the town clerk or registrar, upon application of the parties about to wed, or upon their filing with such officer a notice of intention to wed.

The officer charged with the duty of issuing the marriage license or certificate assumes various titles in different parts of the country, depending upon the locality; the privilege of officially sanctioning the wedding being enjoyed by the county recorder, judge of probate court, clerk of county court, county clerk, registrar or town clerk, clerk of the peace, county judge, ordinary of the county, clerk of the circuit court, clerk of the district court, registrar of deeds, clerk of orphans' court, and county auditor, as the geography of the case may demand. The county recorder issues the license in Arizona, Idaho, and Missouri. In Idaho it is the recorder of the county where the wedding is to take place. In St. Louis, however, the license is issued by the recorder of the city of St. Louis.

The judge of the probate court is the same officer, styled the clerk of the orphans' court in Pennsylvania, and in New York the surrogate. In Alabama, Kansas, Nebraska, and Ohio the license is issued by the judge of the probate court. In Ohio, if banns are published, a license is not necessary. In Alabama and Ohio application should be made to the judge of the county where the bride resides, while in Nebraska the judge of the county where the wedding is to take place is the proper officer. In Ohio, if the judge of probate is the prospective groom, he must procure his license from the Court of Common Pleas. In Pennsylvania the license is issued by the clerk of the orphans'

court, where the wedding is to take place; while in Georgia the proper officer to issue the license is the ordinary of the county where the bride usually resides. In Delaware the candidates for matrimony must get the license from the clerk of the peace, unless they choose to publish the banns, in which case no license is necessary. In Minnesota the clerk of the district court of the county where the bride resides or is to be married; in North Carolina the registrar of deeds of the county where the wedding is to be; in Washington Territory the county auditor; in Florida the county judge; and in Arkansas the clerk of the county court, are the proper licensing officers respectively. In Iowa, Indiana, Louisiana, Maryland, and Mississippi the clerk of the circuit court is the proper officer—in Iowa and Maryland in the county where the wedding is to take place; in Indiana and Mississippi in the county where the bride usually resides. In the parish of Orleans, Louisiana, the Board of Health is designated to issue the license, and the clerk of the circuit court elsewhere in the State. The county clerk is the proper officer in California, Colorado, Dakota, Illinois, Kentucky, Nevada, Oregon, Tennessee, Virginia, Texas, West Virginia, and Wyoming—in California, Dakota, Illinois, and Wyoming in the county where the bride usually resides; in the other States in the county where the wedding is to take place, except that in Nevada it may be issued in the county where either the bride or groom

resides, and in Nevada, if both are non-residents, then the license may be issued by any county clerk; and in the County of Multnomah, Oregon, it should be issued by the clerk of the county court, and by the county clerk elsewhere in the State. In Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont notice of intention to marry must be issued with the town clerk, or registrar, who issues a certificate to that effect. In Massachusetts it should be in the city or town where parties propose to wed; in the other States named, in the city or town where the parties or one of them reside. The penalties for failure to return, file, or record the marriage certificates, or to officiate without a marriage license, or contrary to law, will now be considered.

CHAPTER XVI.

PAINS AND PENALTIES—LIABILITY OF CELEBRANT AND LICENSING OFFICIAL.

"Law has been called a bottomless pit, not so much because of its depth, as that its windings are so obscure nobody can see the end."—MORRIS.

IT has been shown in what States marriage licenses are required. It has been observed also that the requirements of law with respect to these preliminaries must be complied with, in many instances under penalty. What clergymen and officials desire chiefly to know, and the matter which deeply concerns them is, under what circumstances these penalties may be incurred, and the nature and extent of the liability involved thereby. When a license has been issued authorizing a couple to be joined in marriage, it must be returned in order to be filed, indexed, and recorded with the proper officer. The law usually prescribes and limits the time within which this must be done. In some localities the time allowed is ten days, in others thirty days, in others three months. A fine or forfeiture usually attaches in case of a failure to comply with this provision as to returning the license when a person undertakes to solemnize a marriage in those States where

the license is required. An attempt to officiate where the parties have no license is likewise punishable by fine or imprisonment, or both. Where a person who is not authorized to celebrate marriage assumes to do so, he may in some localities be punished. Where the celebrant joins persons in wedlock, when he knows they are under the age of consent, or are forbidden by the laws of the State to marry, such an act in some parts of the country constitutes a crime. In a few States the clergyman or minister must file with the proper officer his credentials and license showing his official or ministerial character, as in Arkansas, Minnesota, Nevada, Ohio, and Wisconsin; and in Kentucky, Virginia, and West Virginia he is required also to file a bond before he is qualified to officiate at the altar. For failure to observe these requirements, also, he may be fined or imprisoned; making a false return with regard to any marriage celebrated by an official will, in some localities, likewise subject the celebrant to severe penalties.

In those States also in which no marriage license is required, the celebrant becomes liable if he officiates at a wedding where he knows the parties are within the age of legal consent, or is cognizant of any impediment which would render the marriage unlawful, or if he should fail to file a certificate of his official acts with the proper officer. The licensing official also, who issues a license to persons who are not entitled to it under the law, may be fined or

imprisoned or both, according to the locality in which the error is made. He must be doubly careful in case the applicants are minors, to secure the consent of parents or guardians, and his failure to do so may subject him to severe penalties. His neglect to properly file, index, or record a certificate returned to him by the celebrant, may likewise cause him to suffer. The laws of the various States are not at all in harmony, either as to when and under what circumstances liability will be incurred, nor as to the severity of the punishment. Care has been taken, however, to state the law of each particular State, and to arrange the States alphabetically for easy reference in a subsequent chapter. The present purpose is to indicate the importance of this branch of the subject and point out some of the liabilities prescribed.

The most severe penalties for solemnizing a marriage without a license, will be incurred in Alabama, Florida, Georgia, Kansas, Kentucky, and Louisiana. In either of these States, the celebrant who fails to comply with the law when so officiating, may be fined in a sum not exceeding one thousand dollars. For marrying a couple without a license in Georgia in case the banns have not been published, the celebrant shall forfeit five hundred dollars, or he may be convicted of a misdemeanor and punished by a fine not exceeding one thousand dollars, or imprisoned not exceeding six months, or sentenced to work in the chain gang not exceeding twelve months, or any one

or more of these punishments. In Alabama the celebrant will not escape the meshes of the law by going into another State, in order to marry two citizens of Alabama, who have no marriage license. The statute specifically declares that the punishment may be incurred in case the parties go out of the State in order to evade the law of Alabama, requiring a license. In Kansas, if the bride and groom are first cousins and the celebrant knows it, and performs the ceremony, he may be fined not exceeding one thousand dollars. Where he knows the marriage is otherwise criminal or bigamous, or that the parties are under the age of consent, and solemnizes it, he may on conviction be imprisoned not exceeding one year or fined not less than five hundred dollars, or both. In Kentucky the celebrant who officiates at a wedding, where no license has been issued to the parties, may be fined as above stated, or imprisoned not less than one month nor more than one year, or both. In Louisiana a fine not exceeding one thousand dollars may be incurred for failure to fill out and return the act of celebration executed in duplicate within thirty days after the wedding. In Pennsylvania if the celebrant shall make a false return with respect to any marriage performed by him, he may be fined not exceeding one thousand dollars. Persons may marry themselves in Pennsylvania, but they must have a license for that purpose, just as if they were to be married by a minister or magistrate. In the former case it must be properly witnessed ; but a cele-

brant who performs the ceremony or a witness who attests a marriage where no license has been issued, forfeits one hundred dollars; for failure to return the certificate within thirty days, he incurs a fine of fifty dollars. If the celebrant officiates at a wedding where either the bride or groom, or both, are intoxicated, he is guilty of a misdemeanor, and may be fined fifty dollars and imprisoned not exceeding sixty days.

In Connecticut, Indiana, Iowa, Maryland, Minnesota, Missouri, Nebraska, Nevada, Oregon, South Carolina, Tennessee, West Virginia, and Wyoming, a celebrant solemnizing marriage contrary to law, or knowing he has no legal right to do so, may be fined not exceeding five hundred dollars. In Nebraska the penalty is incurred also for failure to make and record the return within three months to the probate judge, or for making a false return; the punishment may be also in the alternative, imprisonment not exceeding one year. In Oregon the certificate must be returned by the celebrant to the county clerk within one month, and for failure to do so the fine is fifty dollars for every five days' delay. The penalty in South Carolina, where no license is required, is incurred by a celebrant who officiates at a wedding of a white and colored person, made criminal in that State. In Missouri, if the marriage is performed without a license, the celebrant is guilty of a misdemeanor, and may be fined not exceeding five hundred dollars, and becomes liable also, in

case either the bride or groom is a minor, to a suit for damages, which may be brought against him by the parent or guardian; but the damages in such an action shall not exceed five hundred dollars. Even where a marriage license has been procured, if either party is a minor, the celebrant will nevertheless be liable if he solemnizes the marriage without the consent of the parents, and may be sued for three hundred dollars' damages, and may also be indicted for a misdemeanor, and on conviction imprisoned not exceeding six months nor less than one month. In Tennessee it would seem that the clerk of the county court, who issues the license, and not the celebrant, incurs the penalty if the parties are not capable in law of entering upon the marriage contract. In West Virginia, if the celebrant performs the ceremony without a license or lawful authority, he becomes liable to a fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or both. For performing the ceremony between a white and colored person, the fine shall not exceed two hundred dollars. In Iowa, not only the celebrant, but all parties to the marriage, or aiding and abetting, where no license has been obtained, may be fined not exceeding five hundred dollars, or imprisoned not more than one year. In Wyoming the fine is incurred by the celebrant also for failure to return the marriage certificate to the county clerk within three months. In Virginia and West Virginia the celebrant must be a clergyman, who must file a

bond in the penal sum of fifteen hundred dollars, and for failure to return the certificate to the clerk of the court whence it issues, the celebrant forfeits his bond. In Nevada if the celebrant marries a couple without a license, or knowing of any impediment to the marriage, he renders himself liable, and may be fined not exceeding five hundred dollars, or imprisoned not exceeding six months, or both. In Washington Territory, where the celebrant officiates at a marriage which is contrary to law, or where he has no legal right to officiate, he may be fined not more than five hundred nor less than one hundred dollars. In Colorado, for solemnizing a marriage without a license, or knowing that either party is incompetent to marry, he is liable to a fine of not less than fifty nor more than two hundred dollars; and for failure to transmit the marriage certificate within three months to the county clerk where the marriage took place, he forfeits one hundred dollars. In Arkansas every minister or priest, in order to become qualified to officiate at a wedding, must file and record with some clerk and recorder in the State his license or credentials of his clerical character, and should he solemnize a marriage without first doing so, he is guilty of a misdemeanor, and liable to a fine of not less than one hundred dollars. In many States, if the celebrant fails to return the license or certificate to the proper officer within the proper time, he will forfeit as a penalty one hundred dollars. This is the rule in Arizona, Illinois, and in Arkansas. In

Idaho, Minnesota, and Wisconsin the fine must not exceed one hundred dollars.

In New Hampshire, if the celebrant officiates with or without a license, when he has no authority, he may be fined not exceeding three hundred dollars, but if he is qualified to perform the ceremony, and acts without a license, he forfeits sixty dollars for each offense; and for neglect to perform any duty required of him, the fine shall not exceed one hundred dollars. In Vermont the celebrant forfeits ten dollars for acting without a certificate, or for failure to return the certificate within ten days; but for officiating when he has no right or authority to do so he may be fined not less than one hundred dollars, or imprisoned not less than six months. The certificate issued by the town clerk, however, when acted upon by the celebrant, relieves him from responsibility as to the correctness of its statements. In Delaware the celebrant must make a return of all certificates every three months, and for failure to do so forfeits twenty dollars. For solemnizing marriage without authority, the celebrant is subject to a fine of five hundred dollars; and for knowingly marrying minors without parents' consent, he may be sued for damages by the party aggrieved.

In Mississippi the celebrant must go to jail if he marries a couple without a license, since no fine is prescribed; and the imprisonment shall not be less than one nor more than six months. And if he goes out of the State to officiate without a license, the

law declares he is guilty in the same manner as if he had acted in Mississippi.

In New York no marriage license is required, but if the celebrant shall officiate at a wedding where he knows that either of the parties is within the age of legal consent, or an idiot or a lunatic; or to which within his knowledge any legal impediment exists, he shall be deemed guilty of a misdemeanor, and may be fined or imprisoned, or both, in the discretion of the court. The punishment for a misdemeanor, in the absence of a specific penalty, is imprisonment in a penitentiary or county jail for not more than one year, or by fine not exceeding one thousand dollars.

The licensing official, for any violation of the duties incumbent upon him, incurs similar liability to that imposed upon the celebrant for a neglect or violation of duty in the States referred to respectively. It is frequently incumbent upon him to examine all applicants under oath to ascertain all the facts as to age, residence, parentage, and place of birth. He must be exceedingly careful in case of minors, and his failure to secure the consent of parents is often a very serious matter. It is his duty to see that no marriage licenses are issued except to parties who are lawfully entitled to receive them; and he must exercise the highest degree of diligence in promptly filing, recording, or indexing all certificates returned by the celebrant. In the Southern States, where white persons are forbidden to marry with persons of color, great care must be exercised

to avoid liability. In Georgia, if the licensing official neglects to make inquiry concerning the facts, where application is made to him, he may incur a fine of five hundred dollars. In Indiana, if the license is issued contrary to law, the official may be fined in any sum the jury may deem right, so that the severity of the punishment rests wholly with the jury. In Kansas, if a license is knowingly issued to first cousins, the officer may be fined not exceeding one thousand dollars nor less than one hundred. In Kentucky, for knowingly issuing a license contrary to law, the officer may not only be fined not more than a thousand nor less than five hundred dollars, but forfeits his office.

In those States where no license is required, the officer whose duty it is to file or record the certificate returned by the celebrant, incurs usually a similar penalty to that prescribed where the celebrant fails to make the proper return to the recording officer.

CHAPTER XVII.

QUALIFICATIONS OF CELEBRANT—CLERGYMEN, PRIESTS, AND MAGISTRATES.

"'T was always held, and ever will,
By sage mankind discreeter,
To anticipate a lesser ill
Than undergo a greater."

One of the offenses for which punishment is prescribed in connection with matrimonial affairs, is assuming to solemnize marriage without being authorized by law to do so. It becomes important, therefore, to inquire what persons are authorized to officiate at the wedding ceremony. As a rule, a minister of the gospel or priest of any denomination has authority to celebrate marriage in the State in which he resides and carries on his pastoral work. The difficulty which in England grew out of the construction of the word "ordained," and led to an act of Parliament to confer upon dissenting ministers, in some parts of the United Kingdom, power to solemnize marriage, ought not to arise here, especially in those States where the courts have declared that the canon law and those artificial

rules governing the ecclesiastical courts in Europe have no place in American institutions and form no part of our jurisprudence. Some States, however, have retained the word "ordained" in this connection, without other qualification, as Vermont, Massachusetts, Minnesota, Mississippi, and Nevada, notwithstanding the fierce controversy sustained in the House of Lords in England as late as 1844, as to what constituted Episcopal ordination, or rather as to whether the ceremonies adopted by the dissenting Protestant bodies, in ordaining clergymen, were sufficient to constitute such ministers "ordained priests," in the eye of the law; and if not, whether a person, other than a priest ordained according to the rites of the Catholic Church or the Church of England, could lawfully celebrate marriage. But the word is usually qualified by others, so that these vexed questions can no longer arise to disturb and annoy the domestic tranquillity. In Colorado the law designates any licensed preacher of the gospel. In Delaware he must be ordained or appointed according to the rules of the Church to which he belongs. In Illinois he must be a minister of the gospel "in regular standing." In Iowa he may be an ordained or licensed officiating minister of the gospel. In Kansas he must be a licensed preacher of the gospel. In Kentucky he must be a licensed minister or priest, and must give bond. In Louisiana the language is so broad as to cover any minister of the gospel or priest of any religious sect. In Maine,

Missouri, and Wyoming he may be an ordained minister or licensed preacher. In Maryland, where, with the exception of Quakers, only clergymen are authorized to celebrate marriage, the law simply designates "a minister of the gospel." In Montana he must be a "settled minister of the gospel." In Nebraska every preacher of the gospel authorized to perform marriage by the usage of his church may do so. In New Jersey he must be a "stated and ordained minister." In New Mexico the law says any ordained clergyman without regard to sect. New York designates ministers of the gospel, or any legally incorporated religious congregation, and priests of every denomination. In Ohio any ordained minister of any religious society or congregation is designated. In Rhode Island not only an ordained minister, but any elder of any religious denomination, has the same authority. In Tennessee "regular" ministers of the gospel of every denomination are named in connection with Jewish Rabbies, having care of souls. In Virginia and West Virginia he must produce proof that he is in regular communion with his religious society, and must give bond. In Texas, he must be regularly licensed or ordained. In Washington he may be a minister or priest of any church or religious denomination in the Territory. In Wisconsin he must be an ordained minister or priest in regular communion with any religious society, and continue to be such.

Some States require a clergyman or minister not

only to be regularly ordained or licensed, but also declare that he must be actively engaged in his profession or in the work of the ministry. This would seem to be true of Connecticut, Iowa, Massachusetts, Michigan, Montana, and New Hampshire.

In some States the right to celebrate marriage is regarded as a privilege to be enjoyed only by such clergymen as reside within the State or Territory. This is the law in Indiana, Massachusetts, Michigan, Rhode Island, and Washington. In New Hampshire, a minister who resides out of the State, but has a pastoral charge in the State, is qualified. In case he has no such charge, and resides out of the State, he is not qualified unless he shall be specially commissioned by the governor of New Hampshire. In Vermont he must either reside in the State or labor statedly therein as a minister or missionary.

The importance of this question of the residence of the officiating clergymen becomes apparent in connection with cities and places upon or near the borders of the States named, where parties about to marry by crossing a river, lake, or borderline may, through ignorance or design, pass from one jurisdiction into another having different and conflicting rules with regard to the mode of entering into the marriage contract. In Connecticut it is declared specifically that residence is not an essential qualification to authorize a clergyman to solemnize a marriage, and in Louisiana it is not even required that he shall be a citizen of the United States. Some

States, with regard to this question of domicile or fixed locality, require the clergyman to procure and file with some clerk in the State his license and credentials, as in Arkansas, Minnesota, Nevada, Ohio, and Wisconsin, while in Kentucky, Virginia, and West Virginia he is also required to file a bond. The law in the several States not mentioned above is silent, so far as the question of the residence, domicile, or citizenship of the minister is concerned.

In this connection, however, it may be observed that the liberal policy which prevails throughout the United States in matters of religious freedom and the liberty of opinion guaranteed to every citizen, has special regard and consideration for the marriage contract. People of every creed and nationality have, since these shores were first discovered, flocked to the New World, and the breadth and scope of the political liberty enjoyed in the republic here established, have attracted the attention of mankind and stimulated emigration, so that multitudes from every nation and from every clime, have sought a home in the territory of the United States. The laws governing the domestic life are sufficiently broad to harmonize all shades of opinion in this cosmopolitan commonwealth; so that individuals belonging to a moral or religious body, organization, congregation of any description, whether orthodox or or heterodox, whether Jew or Gentile, or calling themselves merely speculators and inquirers in the field of morals or ethical culture—may nevertheless

marry and be given in marriage in the mode prescribed by the church, society, or congregation to which they belong, so long as monogamy, and not polygamy, is practised, and the rites or ceremonies do not offend decency or public propriety.

A civil magistrate, authorized to celebrate marriage, as a judge, a justice of the peace, a mayor of a city, a governor, or other officer, must usually act within the territory to which his jurisdiction is confined while in the exercise of his other official duties: a governor, anywhere in the State; a judge, usually though not always within his judicial district; a justice of the peace, in his county; and a mayor, within the limits of his city. In Florida, where a notary public may officiate at a wedding, he must act within his county. In Louisiana only notaries within the parish of West Feliciana are qualified to act.

In every State and Territory in the United States, a clergyman or minister, with the qualifications referred to above, is authorized to solemnize marriage. In three States, Maryland, Virginia, and West Virginia, this authority is conferred exclusively upon the clergy, and no civil magistrate or other officer has a right to officiate at the matrimonial altar. But in the two States last named, a clergyman in order to render himself eligible must file a bond in the penal sum of fifteen hundred dollars. In Rhode Island an elder of any denomination is qualified to officiate. A justice of the peace is authorized to solemnize marriage in every State and Territory in

the United States except in Delaware, Maryland, Rhode Island, Virginia, and West Virginia. Mayors of cities are qualified also in Iowa, New Jersey, New York, New Mexico and South Carolina, and in Delaware the mayors of Wilmington and New Castle. In Mississippi a member of the board of supervisors may officiate. This honor is conferred upon the highest civil officer in the commonwealths of Arkansas and Montana, where the governor is designated. Also in New Mexico, if he should be classed as a civil magistrate. Also in South Carolina, where any officer chosen by the parties is qualified. Maine, however, is the only State in the Union where this peculiar honor has been conferred upon a woman. The right to solemnize marriage in that State has been accorded to them. They are required to be appointed and commissioned by the governor for that purpose.

In order to avoid difficulty and embarrassments, which might perhaps arise where the celebrant acted without due authority, or without his territory or jurisdiction, in many of the States the law declares that no marriage supposed by the parties, or by one of them, to be valid shall be in any wise affected by reason of want of authority in the minister or magistrate or other person pretending to be such minister or magistrate who performed the ceremony, nor shall such objection be heard from one party, who has fraudulently induced the other to believe the marriage was legal.

CHAPTER XVIII.

IS A MARRIAGE, VALID IN THE STATE OR COUNTRY WHERE CELEBRATED, VALID ELSEWHERE.

"Bad laws are the worst sort of tyranny; they derive a particular malignity from the wisdom and soundness of the rest of our institutions."

BURKE.

THE boldness of an inquiry which challenges any settled fundamental principle, may well excite surprise and wonder. In this busy world, with its varying changes and uncertainties, there are yet some principles in the realm of jurisprudence, which the student is taught to believe are clearly and definitely established, fixed and abiding as the stars. One of these primary axioms is the familiar rule of private international law, that a marriage, valid where solemnized, is valid everywhere. But the evils growing out of a host of conflicting laws on the subject of marriage and divorce, in nearly half a hundred independent sovereignties, embraced within the same commonwealth, become painfully conspicuous when this cardinal doctrine of legal science comes to be examined. To this wholesome rule, which constitutes the strongest bulwark relied upon to sustain the integrity and sanctity of marriage, the exceptions

are supposed to be rare indeed. Incest and polygamy embrace the only exceptions heretofore conceded by elementary writers. The scope of these exceptions, however, are magnified in view of the practical operation of the inconsistent divorce laws at present existing in the United States. Indeed, it may be said that the endless complications and difficulties which have grown out of this intricate conflict of authority, seriously threaten the institution of marriage. Divorces can be obtained against non-residents without notice, and with absolute secrecy. In attempting, in some quarters, to punish divorced persons for whose guilt the marriage has been dissolved, local disabilities are prescribed, which render them incapable of contracting marriage in one State, while in another the disability so created is not recognized.

These contradictory rules of law, whereby an individual is permitted to marry in one locality, while forbidden to do so in another, result in endless suffering and wretchedness. They prescribe conflicting regulations which render the nuptials valid in one place and void in another. The wedded companion is a wife here, while she is simply regarded as a concubine there. The status of children are made thereby legitimate in one State and bastards in another—capable of inheriting in one tribunal, while disinherited elsewhere. This state of things has virtually abrogated and set at naught the doctrine that a marriage valid where solemnized is valid every-

where. The necessity of a uniform and harmonious system, fixing and defining the status and disabilities of divorced persons, and the offspring of their marriages, is urgent and pressing. Marriage is holy and sacred; the anomalous state of the law with respect to it degrades it, and casts upon it reproach and odium.

This disability, whereby divorced persons in certain States are forbidden to wed, constitutes but one of the causes which enlarge the exceptions to the rule, that a marriage valid where solemnized is valid everywhere. A number of the States have extended the crime of incest so as to embrace relationships which include the marriage of first cousins. The names of these States, with a reference to this branch of the subject, will be found in a previous chapter, relating to marriage among blood relatives, at page 51. A number of legislatures throughout the country have also declared marriage among certain step-relatives, and kindred created by ties of affinity, to be incestuous and void. While these kindred are forbidden to marry in the particular States referred to, they may lawfully marry in those States where the crime of incest includes only lineal ancestors and descendants, and relatives in the collateral line, including only brothers and sisters. The State which has most recently legislated on this subject is Illinois, which forbade first cousins to marry by a law passed in June, 1887. In the chapter mentioned relating to the subject of marriage among blood-relatives, the

question was raised as to what might be the status in the supposed case of cousins living in Chicago, who went to Milwaukee and were there married. By the law of Wisconsin the marriage is valid; by the law of Illinois it is void. How far will the courts of Illinois apply the doctrine that a marriage valid where celebrated is valid everywhere? True, where the marriage involves the crime of incest, the rule has no application. But what is incest within the meaning of the exception? Is it to include any marriage among distant relatives, or persons related by affinity, that any legislature anywhere may choose to prohibit. Suppose the legislature should choose to declare that marriage between sixth cousins shall be incestuous and void. In that case such marriages, while they would constitute incest within the meaning of the particular local statute, are certainly not embraced within the ordinary meaning of that crime. Incest, according to Mr. Joel P. Bishop, one of the ablest writers upon this subject, embraces only such marriages as offend the law of nature, or more correctly speaking, the moral law as revealed by divine inspiration in the decrees of Moses. The marriage of first cousins, as has been shown, does not offend this divine law. Hence it cannot be said that such marriages are within the exception to the rule which declares that a marriage valid where solemnized is valid everywhere; and cousins lawfully espoused in Wisconsin should, according to some precedents, have their marriage sustained as valid in

Illinois. In every other State it would be legal. A similar question came before the courts of Massachusetts many years ago, at a time when whites and Indians were forbidden to marry there. The couple, who resided in Massachusetts, finding their marriage would be void if performed at home, went into Rhode Island, where they could marry legally, and were wedded. The marriage was held to be good in Massachusetts also, on the ground that the law of that State contained only a prohibitory clause, and declared such marriages void. It did not, however, declare that in case citizens of Massachusetts went out of the State for the purpose of evading its laws, with the intention of returning, such foreign marriage would be void in Massachusetts. In other words, the law must not only declare a particular marriage to be void if performed within the State, but must go further and declare such marriage void wherever it may be solemnized.

Upon the same principle a man in Kentucky who desired to marry the widow of a deceased uncle, finding he could not do so in that State, went to Tennessee, where the nuptials were celebrated, and the marriage being legal in the latter State, was subsequently held to be valid in Kentucky also. The courts in many Southern States, however, refuse to recognize mixed-race marriages falling within the prohibition designated miscegenation. In some instances the laws provide that where such marriages are performed out of the State, they will be void, if

the parties subsequently return. The courts of Louisiana have declared that such marriages never can have any validity within her borders.

In the case under consideration with regard to the marriage of cousins in Illinois, the law, while it makes such marriages invalid, does not declare that they shall be void, if entered into by citizens of Illinois without the State. The punishment, however, is severe, and not only subjects the offender to imprisonment for a term not exceeding ten years, but declares that the guilty party shall be deemed infamous and forever incapable of holding any office or voting at any election.

In a number of States, the statute expressly declares that a marriage valid where solemnized, shall be valid in such States respectively. This is true of Arkansas, Arizona, California, Colorada, Dakota, Idaho, Kansas, Kentucky, Nebraska, New Mexico, and Wyoming. These states, with the exception only of California, Idaho, Kentucky, Nebraska, and New Mexico, forbid marriage of first cousins. The exceptions to the rule as to marriages valid where celebrated, or with respect to incestuous marriages, so far as declared in the statutes, seem to be as follows: In Colorado the law says, a bigamous marriage is void, no matter where it was celebrated. In Georgia there is a provision to the effect, that a marriage which would be void if contracted in Georgia, will be void if made by parties out of the State, intending to subsequently reside in Georgia.

In Massachusetts, Vermont, and West Virginia, there are provisions declaring that where the parties to an incestuous marriage reside within the State, and go out of it for the purpose of evading the marriage laws, intending to return, such marriages if contrary to their laws respectively, are voidable. In Maine, however, a marriage contracted under such circumstances, is declared to be void.

In this State of uncertainty, if the first cousins resided in Nebraska, or Colorado, or Arizona, where they are forbidden to marry, and they should nevertheless marry in a State where such a marriage would be valid, and afterwards return to their homes, how far would the laws there, which declare in so many words that a marriage valid where solemnized is valid in such State, afford protection to the wedded cousins?

In the absence of a uniform law, these queries, must remain unanswered in the respective States, until definitely passed upon by their highest tribunals.

Since this inquiry is of universal application, it may be well to inquire how the courts abroad have considered this fundamental maxim, that a marriage valid where solemnized is valid everywhere. Lord Brougham has gone even so far as to hold that a marriage solemnized in England can only be dissolved in England. Justice would seem to require that the rule should remain inviolate, no matter where the marriage was performed, or in what

obscure corner of the world the wedding took place, or by what strange rites or customs it was consummated. When the ceremonies have been performed, which are recognized by universal custom to establish the relation of husband and wife, the offspring of such a marriage are legitimate, and ought not to suffer the loss of inheritance or be denied their birthright, because the nuptial ceremonies happen to be performed differently in different countries. The English courts have recently refused to recognize the marriage of an English officer, who espoused the niece of a powerful native warrior chief who reigned among the savage tribes in Southern Africa. The Englishman was stationed in the dark continent, and after remaining for a time among the Hottentots near Cape Town, was appointed British Resident with Montsioa, the chief of the Baralongs, a barbarous or semi-barbarous people dwelling in a country beyond the British limits, known among those strange tribes as Bechuanaland. It was claimed that these Africans had no religion or religious rites, and that they practised polygamy, a custom which prevails in that benighted country. Among the household of the African chief with whom the British officer resided was Teepoo, a niece of the chief, who found favor in the eyes of the foreign soldier at her uncle's rude court. After a novel courtship, the white man asked the hand of Teepoo in marriage, and having received a favorable answer, his suit was accepted, and all the preparations for the wedding were

arranged in accordance with the custom of the country.

The parents' consent was the first essential, which, having been obtained, was accompanied with the usual agreement as to the number of cattle the husband must deliver to his father-in-law, after the birth of the first child; no compensation being required should the union not prove fruitful. It then became the duty of the groom to slaughter an animal, —a sheep, a buck, an ox, or a cow—and this task was eagerly performed. The groom was next required to take the head of the animal slain to the bride's parents, and its hide also, which is cleaned and softened. Having performed these offices, the man and the woman became, according to the custom of the people of Bechuana, husband and wife. All these things the British officer did, with the purpose and intent of making Teepoo, the Baralong girl, his bride, and thereupon she became his lawfully wedded wife, according to the laws of Bechuanaland. The husband, though dwelling in an uncivilized country, in the camp of a savage chief, who was almost constantly engaged in war with his neighbors, had property in England, and derived an income from his father's estate in Yorkshire. The marriage took place in October, 1883, and in July, 1884, the English officer was killed in battle, in a fight with the Boers. Ten days after the father's death, a little daughter was born, the fruit of the marriage with Teepoo. The property of Teepoo's husband

came to him by his father's will, which provided that he should have the income of a certain fund so long as he lived, and upon his death the principal should go to his children should he leave any, and if not then the estate was to go to his elder brother.

These novel circumstances brought the little Anglo-African into an English court, claiming the property left to her father and his children. The claim was contested by the elder brother, who contended that the daughter of Teepoo was not a child —or at least not a legitimate child—of his brother, for the reason that his marriage, though valid in Africa, ought not to be sustained as valid in England. Counsel for the child relied upon the well established rule of private international law above referred to, that a marriage valid where solemnized was valid everywhere. The court refused to recognize the principle as applicable beyond the limits of Christendom, and declared that it did not extend to polygamous or semi-civilized people unless their marriage ceremonies are "formed on the same basis as marriages throughout Christendom." The court, however, expressed the hope that the English relatives would care for and support the infant, declaring that whatever may be her legal status, she is undoubtedly his child.

The grounds upon which this decision rests are open to criticism. It is proper to punish polygamy, but is it just to punish the offspring of such marriages? It is true, as Mr. Bishop observes, that "no

country in which polygamy is not tolerated can allow a man to have two wives at the same time. In such a case, the court would be obliged to declare a second marriage of either of the parties to be void. wherever it may have been contracted." The little daughter of the English officer, however, was not disinherited on the ground that her father had practised polygamy, but because polygamy was practised in the country where the wedding took place; and the court held that this fact alone raised the presumption that the Englishman married in that country with the object and intent of practising polygamy. The presumption is unfair and wholly unwarranted. Polygamy is a crime, but the mere fact that an Englishman gets married in a polygamous country will not create a presumption that he intends to commit a crime.

The law will not presume crime. Suppose an Englishman, while travelling in the United States, should visit Utah, where polygamy is practised, and should happen to meet a lady whose charms he was unable to resist, and marry her in Salt Lake City. Would the court, after his death, in view of the fact that he married but once, bastardize his children because he was married in a country where polygamy is practised? Would the law presume he intended to practise polygamy because he married a wife in Utah? In the English case the court went further, and declared as an additional reason for refusing to recognize the Baralong marriage, that it was not

celebrated in a Christian land, and must for that reason also be disregarded. The proposition is too broad. In India the Parsee is distinguished for learning and refinement, and yet should a European choose to marry a Parsee lady, it would indeed seem unjust to disinherit his children because the wedding was performed at Bombay, or elsewhere, beyond the confines of Christendom. The same reasoning would apply to a wedding in China or Japan, although the bride might be highly educated and refined and skilled in Oriental accomplishments; or to a wedding in Constantinople, where the bride and groom, though citizens of Christian lands, might fancy a wedding celebrated in a mosque.

The discussion opens a wide field of inquiry, and while good reasons may exist for refusing to recognize as valid a marriage solemnized in a savage country, the mere fact that the ceremony was performed beyond the confines of Christendom, or not in accordance with civilized customs; or in a land where polygamy is practised by others, when nothing of the kind was in fact indulged in, seems altogether too narrow to support a claim for disinheriting of innocent children whose paternity is not questioned or denied.

Yet some of the customs which prevail among savage and uncivilized tribes are of such novel and undignified character, and lacking in every element necessary to be regarded as binding matrimonial obligations, that tribunals in enlightened countries

might well hesitate to recognize them where rights of innocent offspring are not involved. A glance at some of the strange and grotesque modes of sealing the bonds of matrimony in remote parts of the world may prove interesting.

In "the bush" in Australia and New Zealand, where the natives indulge in war to such an extent that it may be regarded as the normal state of society, the bride is usually stolen or captured from the enemies' country, and is the trophy and reward of the physical prowess of the savage lover. Among the natives of Borneo, it is said, no man becomes eligible to marital privileges until he has cut off the head of an enemy. In Patagonia no marriage is permitted without the consent of the chief of the tribe to which the bride belongs. In portions of the Polynesian Archipelago, where the natives are all expert divers, it is said that the bride is bestowed upon the best swimmer. The suitors are drawn up in line along the shore. As soon as the bride appears all are required to plunge at once into the water, and he that remains under longest receives the nuptial prize.

It has been observed that the maxim, that a marriage valid where solemnized is valid everywhere, is a maxim of private international law, applicable to all civilized countries. France, however, refuses to recognize this just and wholesome principle. By the laws of that country, a Frenchman who marries abroad is obliged to publish the banns and the notice of intention to wed in accordance with the French

law, in order to render his marriage valid and binding in his native land. He is required to post a notice of the wedding in the office of the French consul in the country where the ceremony is to be performed, and send a copy of it also to the office of the mayor or other official head of the municipality in France where the groom resides or formerly resided. Should a Frenchman travelling in the United States, or even residing here, seek the hand of an American lady in wedlock, what would she know, or what could she be supposed or expected to know, about the laws of marriage in France? And yet, if she should marry under such circumstances, a failure to comply with the French law with respect to publication and notice would enable her husband, should he feel disposed to reject his manhood for selfish ends, to repudiate the marriage in France with impunity. The wife would find no protection in the French courts, since the friendly doctrine, that a marriage valid where solemnized is valid everywhere, finds no place in the laws of that country.

The experience of Elizabeth Patterson, the handsome, dashing, and accomplished belle of Baltimore, a city which has always been noted for its handsome women, who espoused Jerome Bonaparte, illustrates this point. The marriage of Madame Bonaparte belongs to history. "It disturbed," says Didier, her biographer, "the plans of the greatest conqueror of modern times, and produced a rupture between a pope and an emperor." But the gross injustice done

to the deserted wife of the young Frenchman through the displeasure of her brother-in-law, the great Napoleon, has never been corrected by amending in that respect the code which bears his name. The marriage of Madame Bonaparte was solemnized in the city of Baltimore in due form by the Right Reverend John Carroll, Bishop of Baltimore, afterwards archbishop of the diocese, and the first primate of the Catholic Church in America. It was recognized as valid by Pius VII., not only in the United States, but in France as well, notwithstanding that the laws of that country as to notice and publication had not been complied with. Yet the courts of France refused to recognize it, and the law has not since been altered with respect to marriages contracted by Frenchmen while abroad.

CHAPTER XIX.

DIVORCE.

"It is in vain for a man to be born fortunate, if he be unfortunate in his marriage."—DACIER.

IT has been shown that marriage is a natural right. Hence it may be contracted without permission of the legislature. But it cannot be dissolved without legislative sanction. It can be assumed without the consent of society, and, therefore, independent of State statutes; but divorce is a creation of State statutes. This power to dissolve the bonds of matrimony is a sovereign attribute which belongs to society. It is inherent in the State; and each may exercise it exclusively, and independently of the other. Under the Federal Constitution Congress cannot legislate upon the subject, except as to the territories. This power to sunder the marriage tie embraces, incidentally within its scope, power to designate the causes for which a dissolution of the nuptial bond shall be decreed. It is a tremendous power, and the welfare of society depends upon the prudence and wisdom with which it is exercised. Marriage binds together the family

in sacred unity; and in the integrity of the family relation the security and stability of the State must repose. The safety and prosperity of society, therefore, is involved in this question of divorce, whereby family ties are dissolved and the work of disintegration begun.

This power never having been surrendered by the States to the Federal Government, we have in the American Union as many divorce laws as there are States in our united commonwealth, with the single exception of South Carolina, the only sovereignty which has not seen fit to create a law sanctioning the dissolution of marriage. As a result our divorce legislation differs widely with respect to the mode in which a marriage shall be dissolved, and as to the causes for which such dissolution may be decreed. In some States the act of adultery constitutes the only ground of divorce, though legal separations are authorized for a variety of causes. In others, the grounds are various, embracing all grades of misconduct and marital delinquencies, cruelty, drunkenness, abandonment, conviction of felony, uniting with religious fanatics who disregard the sanctity of marriage, contracting or concealing specific diseases consequent upon a violation of the bridal vow. Very loose and sweeping provisions have been included in the laws of some States, authorizing divorce for light and trivial causes. These comprehensive features are usually termed "the omnibus clause." Under these broad articles a disso-

lution of the marriage was permitted for causes deemed sufficient to defeat the purposes of the marriage relation, or tending to permanently destroy the happiness of the party seeking relief from the conjugal yoke, or for any cause deemed sufficient by the court.

These "omnibus clauses" are indeed the wonder of our American legislation, and constitute a most remarkable feature of modern jurisprudence. They afford either husband or wife an opportunity of breaking up the home, and dissolving the marriage upon the slenderest pretexts, for reasons suited to the whim or caprice of either. They operate certainly to put a premium on divorce. Evil desires and selfish motives may be gratified under the forms of law. By these loose provisions the security and stability of social order are endangered, and through their blighting influence the home and the family are allowed to rest upon no better foundation than a house built upon shifting sands.

The broadest of these "omnibus clauses" formerly existed in Arizona, Connecticut, and Kentucky, but within recent years have been considerably modified in those States respectively. They still exist, however, in thirteen States, namely: Florida, Kentucky, Missouri, Montana, New Mexico, Oregon, (Pennsylvania, as to limited divorce only), Rhode Island, Texas, Vermont, Washington, and Wisconsin. The provisions in some other States, though liberal, are not sufficiently loose to be regarded as "omnibus clauses."

The law as it formerly stood in Arizona, Connecticut, and Kentucky, practically made divorce free in those States. In Connecticut it was lawful to grant a divorce for "any such misconduct as permanently destroys the happiness of the petitioner, and defeats the purposes of the marriage relation." The persistent and vigorous agitation upon the subject of divorce legislation, and the alarming increase of divorces annually granted in Connecticut, finally led to the repeal of this clause in 1880. The law of Kentucky, though shorter than the famous Connecticut statute, was, if possible, even more comprehensive, since it permitted divorce for "any cause in the discretion of the court." This broad provision has been repealed, but the law now allows a dissolution of the marriage "where the husband habitually behaves toward his wife, for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to her, or to destroy permanently her peace or happiness."

But the most marvellous of all the "omnibus clauses," and the queerest piece of legislation contrived by mortal man, remained in force in Arizona from 1871 to 1877, when a new revision of the statutes was made, from which it was wisely omitted. It was sufficiently comprehensive to confer upon the court power to draw upon the imagination and evolve from the inner consciousness the shadowy memories which induced, or might have induced, the legislator to vote for the adoption of the "omnibus

clause," for it provides in express terms for cases falling within any state of facts which may be presumed to be "within the general mischief the law was intended to remedy." But the latitude of the statute is not confined even to this vague boundary. It covers, also, any case presenting a state of facts falling "within what it may be presumed *would have been* provided against by the legislature" establishing the "omnibus clause," had the legislature been possessed with a sufficient amount of prescience to have "foreseen the specific case and found language to meet it." It will be impossible to appreciate this wonderful piece of legislation without reproducing it. It constituted the seventh ground of divorce, and certainly involves all the mystery and weird extravagance which attaches to that cabalistic number. It is as follows:

"Seventh.—And whereas, in the development of future events, cases may be presented before the courts falling substantially within the limits of the law, as hereinbefore stated, yet not within its terms, it is enacted that whenever the judge who hears a cause for divorce, deems the case to be within the reason of the law, within the general mischief the law is intended to remedy, or within what it may be presumed would have been provided against by the legislature establishing the foregoing causes of divorce had it foreseen the specific case, and found language to meet it, without including cases not within the same reason, he shall grant the divorce."

The "omnibus clauses" now in force in the States

above referred to are couched in such vague and uncertain terms as to fit almost any state of facts, where it appears that the conjugal relation is no longer pleasant to one or both of the parties, or where they have allowed themselves to drift apart, perhaps with a view to dissolving the sacred tie of marriage, so that new alliances might be sought. Whenever "life becomes a burden," or the behavior of the parties towards each other is such as to render "living together insupportable," or renders "his or her condition intolerable," a cause for divorce exists in Missouri, Oregon, (Pennsylvania, cause for a limited divorce only), Texas, and Washington. In the last-named locality the people are now engaged in forming a State constitution. It might be well to limit or modify these loose provisions on entering the Federal Union. In Montana, where the people are likewise formulating their State constitution, absence without cause for a year, or absence of husband from the territory without intention of returning, is sufficient to authorize a divorce. What could be simpler, where the parties desire to throw off their vows and obligations, than for the husband to leave Montana, and indicate to his friends that he does not intend ever to return? In New Mexico, abandonment is a sufficient ground. In Rhode Island the marriage may be dissolved for "any gross misbehavior or wickedness in either of the parties repugnant to, and in violation of, the marriage contract." In Vermont "intolerable severi-

ty" is sufficient. In Florida "habitual indulgence of violent and ungovernable temper" will afford the necessary grounds for dissolving the matrimonial union. The field for collusion under these various provisions upon this vital and important branch of the law governing wedlock is apparent, and needs no further discussion or comment.

The great cosmopolitan population of which the American States are composed include men holding every shade of opinion and every kind of doctrine with respect to this subject. Some believe that divorce, for any cause, is immoral and wrong. Others as conscientiously affirm that divorce ought to be decreed on the ground of adultery only. Yet others think that marriage should be dissolved for desertion, drunkenness, cruel and inhuman treatment, conviction for infamous crime, or similar causes. Some contend that where a couple are divorced for adultery, the guilty party ought to be punished, and should never be allowed to marry while the innocent party lives. On the other hand, there are those who regard such a prohibition as not only unjust and vindictive, but as morally wrong.

The result of these various opinions are reflected in the variety of laws at present governing the subject throughout the country. But the chief difficulty arising from this mass of incongruous legislation is not the variety or number of causes for which a divorce may be granted. The greatest danger exists by reason of the ease with which the law may

be set in motion, and the results which follow the granting of the divorce. These evils may be grouped under two heads: first, with respect to divorces against non-residents, procured by publication without actual notice to the defendant. Under cover of such provisions it is possible to procure a divorce, not only without publicity, but with absolute secrecy. Parties are also enabled thereby to obtain a divorce easily by collusion. Practically, such provisions may be said to make divorce free. Second, with respect to the disabilities imposed upon the guilty party, by way of punishment, whereby he is forbidden to marry. Such prohibitions, as has been shown, can have no force or operation beyond the territorial limits of the State in which they are imposed, and can be evaded and overcome by the guilty party by simply going into another State to marry. Hence they are practically a dead letter.

It is nevertheless true that in some States the guilty party is bound to continue to pay alimony as long as the innocent party lives; and in this way only can the punishment sought to be inflicted become effectual. So far as the prohibition which forbids the guilty party to marry is concerned, it might as well be dispensed with altogether, and the punishment confined to payment of alimony.

It is reasonable to suppose that an effort to abolish altogether divorces against non-residents, or at least the granting of divorces by default, and confining

the punishment of the guilty defendant to payment of alimony, a remedy which can be enforced anywhere, might be agreed to, and uniformity of the laws of the States in these respects might be secured.

Another very serious embarrassment resulting from the granting of divorces against non-residents, who are served by publication, and never appear in the action, arises from the fact that the parties to such suits are often placed in the anomalous position of being divorced in the State granting such a divorce, while yet remaining married in every other State where the courts refuse to recognize such a decree as valid. This result must arise of necessity when an attempt is made to procure a judgment against a defendant who is absent from the State, so long as each State, with respect to these matters, is sovereign within its borders. It is true that the Constitution of the United States provides that full faith and credit shall be given in each State to judgments in every other State. But what is a "judgment"? It has been declared upon high authority that in no State can a court make a judgment, in matrimonial controversies, which will be binding in another, unless the court acted with both husband and wife before it. It follows that if one of the parties was not in the State while the suit was pending, the judgment of divorce has no binding force, so far as the absent party is concerned. In other words, it is no "judgment," within the meaning of the Constitution.

A very striking illustration of this fact is presented

in a case where the wife went to Ohio, and commenced suit for a divorce. The husband was not in Ohio at any time while the suit was pending. The court granted the divorce against the absent husband. He, supposing that the Ohio judgment dissolved the marriage, and freed him from its obligation, married again, and lived with his new bride in the State of New York, where he continued in blissful ignorance of his domestic status, until he was rudely awakened from his connubial dream by the grand jury, by whom he was indicted for bigamy, and for this crime he was convicted, for the reason that the Ohio divorce was of no binding force in the State of New York, because the Ohio court acted in his absence, and therefore could not bind him by its so-called judgment. The New York court declared that it would give full faith and credit to a judgment obtained in another State. But in order to constitute a judgment, the decree must have been rendered against a person who was represented and appeared before the court, and that proceedings against a person who was not in the State, and who never was before the court, so far as the absent party was concerned, was not a judgment at all, and was of no more value as a judicial decree than if the paper containing it were blank pages.

This rule, recognized by the Court of Appeals of the State of New York, that a judgment of divorce obtained in another State, against an absentee, who never was personally served, and never appeared in

the case, is indirectly recognized in the divorce laws of Florida, Michigan, and Ohio. Those States declare that where a person procures a divorce in some other State, the fact of procuring such a divorce will constitute a valid ground for divorce in either of the States named. Now reverse the case just referred to. Suppose, instead of the wife going from New York, where the husband continued to reside, and procuring a divorce in Ohio, she had simply lived there until her husband had procured a divorce from her in New York, and served her by publication pursuant to the laws of New York. True the New York divorce might have had no validity in Ohio, but the fact that the husband had obtained a divorce in New York would have been sufficient ground for a divorce in Ohio. This rule, however, instead of remedying the evil, serves only to confuse and complicate matters, as it affords opportunity for creating two worthless divorces, good only in the States where obtained, where but one previously existed.

Illustrations of the unfortunate results of granting divorces against non-residents served by publication, where defendant never received, and was not intended ever to receive, any notice of the suit; or where there is no provision of law whereby the State can be represented in the action, might be multiplied. Other phases of this branch of the inquiry will be found in the chapter concerning matrimonial entanglements, foreign divorces, and marriage of divorced persons.

As the object of abolishing divorces against non-residents, or where the defendant does not appear, is to prevent fraud and collusion, the inquiry may be pertinent, how can a default be prevented? The law cannot compel the defendant to come into court, or to appear in the action. While it is true that an absentee or even a resident cannot be required to appear, the attorney-general or public prosecutor of the county, might, with propriety, be required to be made a party in every divorce case, in order to represent the State, which is largely interested whenever a marriage is to be dissolved. Divorce, as has been said, means the disintegration of the home and the family. Upon these the State must rest, and without them it cannot flourish.

This principle is recognized not only in Great Britain, but also in four American States—namely, Georgia, Indiana, Kentucky, and Vermont. In England it is the duty of the queen's proctor to investigate all matrimonial controversies, while in Scotland this duty is performed by the lord advocate. The law of Kentucky declares that "it shall be the duty of the attorney for the county to resist every application for a divorce, and if successful in defeating it he shall be allowed a fee of not exceeding twenty dollars, to be paid by the husband, which he may be compelled to pay by attachment." In Indiana the rule is that "whenever a petition for divorce remains undefended, it shall be the duty of the prosecuting attorney to appear and resist such

petition." The law of Georgia declares that it shall be the duty of the judge to see that the grounds for a divorce are legal, and sustained by proof, or to appoint the solicitor-general or some other attorney of the court to discharge that duty for him. The Georgia rule is similar to that of New York, and a number of other States, where in case of default the court will appoint a referee to take the proof and look into the facts. But it is not the duty of the referee in New York, or in the States where that officer simply takes the proofs, to resist the application for divorce, as in Kentucky and Indiana. In the last named States the public prosecutor represents the people, and it is his duty to take care that no divorce is granted unless the party is entitled to it, and that no collusion or connivance is practised.

Another mode of preventing collusion, and making it difficult to obtain a divorce, would be to make every divorce case public, and require the issues to be tried before a jury. Secrecy in any kind of litigation is at war with the spirit of our institutions and our laws; and secrecy in divorce trials can work good to no one, and may operate to encourage rather than diminish the evil. Rufus Choate, one of the ablest advocates who ever addressed a jury, emphasized this truth, in the course of his defence in behalf of Helen Maria Dalton, in the famous Dalton divorce case, tried some years ago in Boston, when he said: "Our habits are for public trial and investigation, and our liberties will last just as long as our trials

are public, and not a moment longer. We agree in that; we have this love of a public trial from our ancestors. Who does not remember a remarkable case a few years ago, when her Majesty, the Queen of England, was arraigned before the House of Lords, on a charge, and assailed by a body of trash compared to which the evidence of Mrs. Coburn is as innocent as one of Dr. Watts' psalms or hymns. And here I would like to ask your Honor and this public, whether or not, if it had been proposed to try that cause under lock and key at a long table covered with baize and by lamp-light, the people of England would have borne it? They would have thrown every lord and bishop into the river, and piled the stones of the parliament house on their heads; but they would have seen that trial and heard that trial. Do you think that was for the love of offensive exhibitions, gentlemen? I have the honor to believe, for the country of my descent and yours, that was the old English love of fair play."

Acting upon this principle, which ignores prudish affectation, the law of Georgia requires not only one jury trial in this class of actions, but two. It is there enacted that "no total divorce shall be granted except on concurrent verdicts of two juries, at different terms of the court." In Missouri, however, jury trials in divorce cases are not allowed. In New York and many other States, they cannot be had as matter of right, but only by leave of the court, which may, in its discretion, frame issues to be

tried by a jury ; though the court, in passing finally upon the merits of the case, is not bound by the verdict which the jury may have rendered.

The expediency of these reforms may be briefly considered. Opposition to any effort to abolish divorces against non-residents, and to require the State, through its attorney-general or public prosecutor, to be made a party to every divorce case may reasonably be expected from those who are altogether indifferent to the welfare of society and the moral side of life, and who have no concern beyond selfish interests. Those who have little respect for the sanctity of marriage, and believe that divorce should be free, will vigorously object to any reform which throws about it safeguards or limitations of any sort. But as divorce is a necessary evil, and cases do exist where it might be a wise and merciful dispensation to sever the nuptial bond, what objection can be made to the State giving its sanction to the dissolution, through its official representative. The only object of his presence should be, on the one hand, to prevent collusion and fraud, whereby the law may be cheated ; and, on the other hand, to see that the interests of parties, honestly entitled to a divorce, may be protected, and their rights secured and vigorously enforced.

But a different question is presented when it is proposed to abolish all restrictions, which prevent a guilty party, after a reasonable time, to marry again ; and to confine whatever punishment may be

deemed requisite to a money liability, secured to the injured party. Many sincere and good citizens may here interpose objections, based altogether on moral grounds. So long as the power to legislate upon the subject of divorce is not surrendered to the federal government, and it is scarcely possible that it ever will be, these prohibitions, which forbid the marriage of the guilty party, will remain practically a dead letter, so long as there are States where such persons may lawfully wed.

If reform is the object of the law, and not punishment, a second marriage in many cases might be the most available and surest means of bringing it about. Depriving the individual of an opportunity to live in lawful wedlock would have no tendency, directly or indirectly, towards a reform in morals. Take away the hope of legitimate domestic happiness, and what opportunity is there for reform? Indeed, there are many who conscientiously believe that it is altogether wrong to attempt to enforce such a prohibition, and who regard legislation which prevents the marriage of a divorced person as tyrannical. The little finger of the law is stronger than the loins of a giant. The law is strong enough to disinherit, and can thereby render ineffectual, so far as property rights are concerned, such second marriage. The maxim, "It is excellent to have a giant's strength, but it is tyrannous to use it as a giant," is applicable here. These observations foreshadow the result of a uniform divorce law, operating through-

out the country, if it were made to contain such a prohibition as to the marriage of divorced persons which would be binding everywhere. Under such circumstances the opportunities would no longer be open to an unfortunate defendant, who, following the impulse of his nature, sought to retrieve the past and begin again, determined henceforth to lead a moral and upright life. The only recourse left would be to cross the seas and go abroad in order to carry out this pious resolve. Even this last hope might present obstacles which it would be impossible to overcome.

In view of the fact that such a wide difference of opinion exists upon the matters under discussion, it is extremely doubtful whether two thirds of the States will ever agree to surrender the right to legislate upon the subject of marriage and divorce to the federal government. But the remedy may be accomplished without surrendering such right, in the mode discussed in the following chapters which treat generally of the remedy.

The law of divorce however, presents many evils for which it is impossible to find a remedy. But as nothing is perfect in this world, teachers and moralists have long ago ceased to expect absolute perfection. It is impossible to create virtue by legislation. As has been said by the Reverend Robert Hall, the distinguished London divine: "Laws will not be obeyed; harmony in society cannot be maintained without virtue; and virtue cannot subsist without religion."

Many of these evils, however, can be prevented, or diminished, if not cured altogether. There remains to be mentioned one other phase of our divorce laws. In some States there is but one kind of divorce, which operates to sever absolutely the marriage tie; in other States two kinds of divorce are recognized: one which dissolves the marriage relation; the other which fixes the property rights of the parties, and separates them forever, leaving them still man and wife. This mongrel compromise is termed a divorce "from bed and board," or a limited divorce. Some writers delight to show their utter contempt for these partial divorces, which they regard as a miserable makeshift, which leaves the parties neither one status nor another, occupying an anomalous position in which they are neither married nor divorced, wholly incapable of contracting new alliances—a grass widow and grass widower, sentenced as such for life. They argue that when a divorce is granted, and the marriage is dissolved, the condition and status of the parties are fixed and clearly defined. There are cases, however, where, in some States, the conduct of the parties is such that they think they cannot live together, and yet neither has been guilty of any act which authorizes a divorce. There is nothing to prevent them from living apart if they mutually agree to do so. But if such separations are not expressly sanctioned by law, it is supposed the parties might be more apt to become reconciled and live together agreeably to the bridal vow.

Nevertheless, there ought to be some provision of law, whereby an injured wife, who is unable to secure the evidence necessary to procure the divorce to which she may be entitled, may compel the husband to support her and her children away from him, where it can be shown that his conduct is such as to render life a burden, and makes it impossible for both to live under the same roof.

The number of States, however, in which these partial divorces or separations are sanctioned are gradually diminishing, until there remain but sixteen in which they are authorized, namely: Alabama, Delaware, Georgia, Louisiana, Maryland, Minnesota, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin. In the majority of these States a separation will be granted for abandonment, drunkenness, cruel and inhuman treatment, and like delinquencies, while divorce absolute will be decreed only upon the ground of adultery. In a few States, however, the complainant may apply either for a divorce or a separation, the grounds being identical to secure the one or the other.

Some of the absurd complications constantly arising by reason of the conflict of laws governing the marital relations, are cleverly illustrated by Mr. Waldorf H. Phillips, in his entertaining satire entitled "Who is Your Wife?"

CHAPTER XX.

THE REMEDY—OBJECTIONS TO A NATIONAL LAW.

"No law perfectly suits the convenience of every member of the community; the only consideration is, whether, upon the whole, it is profitable to the greater part."—LIVY

THE cure for the evils growing out of the existence of many systems of marriage and divorce, so far as it can be accomplished by mere human agency, is a uniform law. But how shall this remedy be secured? It has been suggested in some quarters that uniform legislation must, of necessity, be federal legislation. This can be effected only by an amendment to the federal constitution, whereby the States must surrender the power to legislate upon the subject by conferring it upon Congress. Doubtless the great majority of the people of the United States, who have given any thought to the matter, desire uniform legislation with respect to marriage and divorce. But if the only mode of securing this object is by a surrender by the States of their power to the federal government, it is reasonable to suppose that it will never be secured. Many learned and distinguished men and women have discussed this question. Thus far the advocates of a uniform law seem to be

divided into two classes: first, those who favor an amendment to the federal constitution, giving the power to legislate upon the subject to Congress; second, those who advocate concert of action among the States. These two classes may, for convenience, be designated as those who desire a national law, and those who favor voluntary unification by the States. The object of both is a uniform law. Indeed the best interests of the country demand it. A harmonious system governing the matrimonial relations is essential to the welfare of our republic, representing the greatest nation and the most ingenious people on the globe. Such a system is everywhere advocated by the most highly esteemed and intelligent portions of the community. There is no room for argument as to the necessity of uniform legislation. The only question which invites serious discussion is, as to the best means of securing this paramount object.

If we are to have a national law, to supersede the laws of the various States, the constitution of the United States must be amended, and this can be done only with the consent of two thirds of the States. Is it possible to secure this consent? The proposition, however laudable, benevolent, or beneficial it may be, nevertheless requires the States to surrender their sovereignty to the federal government. The opposition to such a scheme will be bitter and protracted. It will operate to postpone a reform, which all admit is a pressing necessity, and

will arouse opposition which may defeat it altogether. Beneath this benevolent and laudable proposal to secure a great moral reform, what ambitious schemes may lurk! What more subtle or ingenious design could be devised to cover plans seeking to cripple or destroy the sovereignty remaining in the States by conferring greater powers on the federal government?

When some of the objections to the plan which requires a grant of power to Congress to the exclusion of the States are considered, they become formidable indeed, and appear to be insuperable.

It is apparent that the bestowal of more power upon Congress makes the general government stronger and the States weaker. The structure reared by American statesmanship was designed to be an indestructible union of indestructible States. How much power will the constitutional amendments already suggested, of necessity, subtract from the States? In the Senate of the United States an amendment has been offered with a view to have that body, in conjunction with the House of Representatives, by joint resolution, present the matter for the consideration of the States. It was in the following language:

"Congress shall have power to legislate on the subject of marriage and divorce by general laws, applicable alike to all the States and Territories; and neither bigamy nor polygamy shall exist or be permitted within the United States or any place subject to their jurisdiction."

It is the first part of this proposed amendment that will arouse opposition, by reason of the grant of power involved. A brief and comprehensive amendment has been suggested in the House of Representatives, couched in the following terms:

"The Congress shall have power to make a uniform law of marriage and divorce."

The same objection will be urged against this proposed amendment, in view solely of the grant of power involved. What power would the States lose should amendments of the character suggested be adopted? This is the vital question. It might seem, at first blush, that the innovation upon the sovereignty of the States would be inconsiderable, when it is proposed only to take away the authority to prescribe the mode of consummating the nuptial bond and dissolving the marriage tie. The powers involved in this matter are not confined to the mere ceremony of the marriage, and do not end with the decree of divorce. They embrace the whole range of domestic life, involving the family relations. They extend to the powers exercised by a court of chancery with regard to guardianship of minors, and the custody, maintenance, and education of children. They extend to the distribution and division of the property, real and personal, belonging to the husband or wife, or to which the children may be entitled, under the provisions of a will, or by right of descent or inheritance, in case there is no will. They

involve questions of legitimacy. When the student takes up his law-book and refers to the separate heads under which these matters are familiarly classed by text-writers on the subject of jurisprudence, he will comprehend the vast extent of power which they cover.

Take away from the State courts jurisdiction in all matters relating to the subject of "husband and wife," of "parent and child," of "guardian and ward," of "dower and curtesy," questions of legitimacy, in so far as they involve "the law of descent," and "the law of distribution," also the law of "procedure in matrimonial actions," and "evidence in matrimonial causes," and what remains of the power and sovereignty of the State? The federal government can never assume jurisdiction of marriage and divorce, in the slightest degree, without eventually absorbing all the powers incidental to the subject. Sooner or later the State courts would be stripped of jurisdiction, and State lines would disappear in the settlement of controversies between husband and wife, arising in the field of jurisprudence with respect to domestic relations. The presence of a United States marshal or other federal officer in administering a federal statute governing marital rights and obligations, acting independently of the domicile of the parties, or the States in which they reside, would involve complications, perhaps more serious and aggravating than any at present existing under conflicting State laws.

There is and there can be no positive assurance as to what sort of a law Congress may be pleased to enact on this very important subject. It already has full power and authority to pass a uniform law as to marriage and divorce, which will be binding and operative in the Territories of the United States and in the District of Columbia. What specimens of legislation have resulted from the exercise of this power? It is true an anti-polygamy law has been passed with respect to the Territory of Utah. How has it been enforced? Some of the most objectionable laws in the country on this subject, exist in the Territories, and are at least permitted, if not expressly authorized, by Congress.

It may be suggested that Congress have power to pass a uniform law, but that its execution be conferred exclusively upon the State courts. This result cannot be secured under either of the amendments thus far suggested. It would require the insertion of an additional clause, which would destroy their object and spirit. Suppose the clause were inserted so that the amendment would read: The Congress shall have power to make a uniform law of marriage and divorce, but the power to administer such law shall be forever exercised by the courts of the several States, exclusive of the federal courts. This would create an anomaly in legislation which it might be dangerous to attempt, and which might lead to graver and more serious embarrassments than any thus far suggested.

In view of the objections, therefore, which may be

urged to a grant of power over this subject to the federal government, it is extremely doubtful whether the plan would ever succeed.

The suggestion that the federal courts shall not exercise exclusive jurisdiction in matters matrimonial, but that their jurisdiction shall be exercised concurrently with the State courts, will not help the matter. If Congress have the power, that ends the matter, so far as the States are concerned. True, the federal government may exercise it in such a way that the State courts, for a time at least, may be permitted to act with the federal courts in the exercise of concurrent jurisdiction. But, once the power is taken from the States and lodged in the Congress, this concurrent jurisdiction will remain in the States, for such time only as Congress may see fit to allow it to be so exercised. The danger lies in surrendering the power, in whole or in part, to the federal government.

It has been observed, however, that there are those who favor concert of action among the States to secure the object under consideration. This course has been recommended by the governor of New York to the legislature, at the opening of the session in 1889. If an amendment could be secured to the constitution, limiting and defining the powers of the States in this matter, it is possible that concert of action could be secured which would give to the United States uniform marriage and divorce laws. These remedies are feasible, and will now be considered.

CHAPTER XXI.

THE REMEDY—AN AMENDMENT LIMITING THE POWER OF THE STATES, AND CONCERT OF ACTION AMONG THE STATES.

"Let there be unity in things necessary, liberty in things doubtful, charity in all things.—MELANCTHON."

SOME of the objections to a national law involving a grant of power by the States to the general government have been considered. It has been shown that they are sufficiently formidable to imperil, if not to defeat altogether, the reform sought.

While the States would doubtless refuse to grant power, they might be induced to limit their authority in order to secure harmony. Indeed many of the evils sought to be remedied may be reached by a constitutional prohibition placed upon the States. These evils arise chiefly from legislation authorizing divorces to be procured against non-residents, and by publication; from the conflict with respect to the prohibition of divorced persons marrying again, and from failure in one State to recognize a marriage which may be valid in another.

The objections to a grant of power cannot be urged against a prohibitory amendment. It is one

thing for a State to allow Congress to exercise a power to the exclusion of the State. It is an essentially different matter for the State to consent to continue to exercise its power within clearly defined restrictions and limitations. While the former proposition involves a surrender of power, the latter involves no surrender at all, but only a consent to exercise it within defined limits. When the constitution was framed, all power sought to be controlled by that instrument was either granted to Congress, or retained by the States to be exercised by them in subordination to definite prohibitions. The grants are clear and specific. Congress shall have power, to borrow money, regulate commerce, establish uniform laws on the subject of bankruptcies, and so on. When the powers are sought to be limited only, but not granted, the language of the prohibition is likewise clear and explicit. No bill of attainder, or *ex-post-facto* law shall be passed. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it. No State shall enter into any treaty; grant letters of marque; coin money; emit bills of credit; pass any law impairing the obligations of contracts, and so on.

It is one thing for the States to surrender their power over the domestic relations, by an amendment declaring, for example, that *Congress shall have power* to make a uniform law of marriage and divorce. It is a very different thing to limit the

power of the States by an amendment declaring, for example, no State shall pass any law making any thing but adultery, or conviction for crime and sentence to imprisonment for life, etc., a ground for divorce. Or, no divorce shall be granted except for adultery, or for [here limiting and defining the grounds for divorce]. So to reach other evils, for example, no divorce shall be granted, unless the attorney-general of the State or the public prosecutor of the Country, shall be made a party to the action. Neither bigamy nor polygamy shall exist within the United States or any place subject to their jurisdiction. A marriage valid where contracted shall be valid everywhere, except where bigamy and polygamy has been practised. As between the two methods of amending the constitution, one whereby the States are required to surrender their power, and the other which involves no surrender, which plan will be more likely to succeed? The most difficult, perhaps, of all the amendments of this character, would be one limiting and defining the grounds of divorce, and one prohibiting any law forbidding a divorced person to marry; but the adoption of amendments of this character, is possible. The other amendments, or amendments of like import, might be more readily secured.

In no better way can this be done than in the mode suggested by Hon. David B. Hill, the governor of New York, in his annual message, in which he says:

"Under existing laws and decisions very different rules prevail as to what constitutes marriage; and while a certain divorced person may legally marry in some States, to do so in others, perhaps adjoining, would be a crime, even though no criminal intent existed. Such anomalies ought not to exist. In order to obtain as far as practicable the end desired, it is necessary to secure a voluntary concert of action among the States. It is suggested, therefore, that some motion should be made at this session toward a conference of representatives of all the States, or of such as may choose to be represented, to consider the question of uniform marriage and divorce laws."

In conformity with this wise and prudent suggestion, a bill was introduced authorizing the governor, by and with the consent of the Senate, to appoint three commissioners to examine and ascertain the best means to effect an assimilation and uniformity in the laws of the States as to marriage and divorce; and to consider the wisdom on the part of the State of New York of inviting the other States of the Union to send representatives to a convention, to draft uniform laws to be submitted for the approval and adoption of the several States. Should this bill speedily become a law, the honor which attaches to the pioneer in this great reform will belong to New York. It is reasonable to suppose that the matter will also be taken up promptly by the legislatures in the New England States, where the subject of reform in the marriage and divorce laws has been agitated for years by such men as Dr.

Theodore D. Woolsey, of Massachusetts; Rev. Dr. Loomis, of Connecticut; ex-Governor Long, of Massachusetts; Judge Jeremiah Smith, of New Hampshire; Rev. S. W. Dike, of Vermont; and a number of other prominent citizens, who have organized the National Divorce Reform League. Many of the leading men in every State and Territory are deeply interested, and advocate some measure of relief. The legal profession, through its National Bar Association, and the several State Bar Associations, have been discussing the necessity of uniform legislation with vigor and earnestness. The clergy of all sects and denominations, though conspicuous in their adhesion to the principle that the marriage tie should be indissoluble, and who regard divorce as a necessary evil, will doubtless acquiesce in any movement seeking to limit the causes for which it may be dissolved. Their great influence has been and is being steadily exerted, through evangelical alliances, synods, assemblies, presbyteries, conferences, conventions, and councils, to secure throughout the country a uniform and harmonious system of legislation.

An invitation to the several States, as suggested by the measure now pending in the New York Legislature, would doubtless receive a prompt and cordial response throughout the country. Its adoption would secure the object sought, and bring together, in convention, a body of representative men from every State and Territory. A most thorough and profitable discussion would result, which would

arouse popular interest, and inaugurate a movement from which great good would certainly be achieved.

The time is opportune. North Dakota, South Dakota, Montana, and Washington have been admitted as States, and each is now formulating a constitution and code of laws suitable to its new position as an independent sovereignty in the political body, forming the greatest nation in history. Now is the time for each to define by its organic law the limits within which legislation as to marriage and divorce may be exercised, so as to guard against abuses. Two years ago Congress appropriated ten thousand dollars to enable the Commissioner of the National Bureau of Labor to collect and report to Congress the statistics of and relating to marriage and divorce in the several States and Territories and the District of Columbia. That report has now been made and covers a period of twenty years, from 1867 to 1886. The figures show a very decided increase in the number of divorces granted, and in the ratio of divorces to the number of married couples during the period. They are startling, because they show that while there has been an increase of about sixty-nine per cent. in population there has been an increase of one hundred and fifty-seven per cent. in the number of divorces, which is in excess of twice the increase in population. The total number of divorces granted in the United States in the time covered by the report, reaches beyond a quarter of a million, and is in exact figures three hundred and twenty-eight thousand,

seven hundred and sixteen. Less than ten thousand divorces were granted in 1867 and more than twenty-five thousand in 1886; in exact figures, nine thousand nine hundred and thirty-seven in 1867, and twenty-five thousand five hundred and twenty-five in 1886.

These statistics are valuable, and will materially aid in the discussion and furnish new proofs of the urgent need of prompt and vigorous action in this matter. Should a convention, such as has been suggested by the governor of New York, be convened, it is fair to presume the result would be a wise and judicious measure to be submitted for the approval of the States. If any, no matter how inconsiderable the number, should deem it prudent to enact it,—or a statute of similar import—its subsequent adoption, if vigorously urged, might in time be secured, at least in a majority of the States. A uniform law, or one uniform in its essential and important features in ten States, would certainly be preferable to ten different and conflicting laws, and would be a stride in advance. If in a few years the number having similar laws were increased to twenty or thirty, the result would then be comparatively easy of attainment with the proper influences at work.

A prudent constitutional amendment, limiting the powers of the States, if it could be secured, would greatly aid the plan with respect to concert of action, for the reason that the field of legislation would be somewhat narrowed by the prohibitions. The diffi-

culty in securing a uniform law is not so formidable, so far as as the provisions relative to marriage are concerned. An agreement as to what shall constitute a valid marriage might be easily arrived at, in view of the fact that a majority of the States are already agreed upon the fundamental principle of the right of parties to contract marriage. Only matters of detail with regard to recording and preserving evidence of the fact remain to be harmonized.

But a uniform law governing both marriage and divorce, in three fourths or even two thirds of the States, is possible of attainment, especially if certain prohibitory amendments limiting the power of the States could be secured. Such a result would operate as a decided reform, and would tend to correct and mitigate some of the evils and hardships arising from the conflict of authority which now prevails.

CHAPTER XXII.

BIRD'S-EYE VIEW OF THE SYSTEM OF MARRIAGE AND DIVORCE IN THE UNITED STATES, ARRANGED GEOGRAPHICALLY.

"No navigator has yet traced lines of latitude and longitude on the conjugal sea."—BALZAC.

THE object of this work would be incomplete without a clear exhibition of the state of matrimony, as limited and controlled by legislation in the United States. The task involved in setting out *in extenso* the statutes of the several States would indeed be laborious and unprofitable. Nevertheless the reader is deeply interested to know the character and prominent features of these various laws. In order to get a correct notion of what these conflicting statutes really are, about which so much has been said and written, a clear statement of the essential portions of the system now in force in each State is necessary. The object has been to group the law of marriage under appropriate heads, to enable the reader to ascertain easily the particular fact concerning which information is desired, and to give also the law of bigamy and grounds of divorce in each State. Care has been taken to state the substance

of the law plainly, without unnecessary repetition, omitting as far as possible technical words or phrases.

ALABAMA.

The most remarkable feature in the marriage laws of Alabama is the requirement that parties under the age of twenty-one years must give bonds in the penalty of $200.00, conditioned that there is no lawful impediment to the marriage.

How to Marry.—No marriage shall be solemnized without a license issued by the judge of probate of the county in which the woman resides. A judge, minister of the gospel, or justice of the peace, who joins persons in marriage without such license, forfeits $1,000. He forfeits this sum also in case he goes out of the State to solemnize the marriage without a license, if one or both of the parties reside in Alabama, unless a license has been procured in accordance with the law of the State where the wedding takes place. The law does not seem to punish the bride or groom, or to declare a marriage solemnized without a license void. No particular form for the license is prescribed by the statute. Marriages may be solemnized by any licensed minister of the gospel, in regular communion with the Christian Church or society of which he is a member, by a judge of the Supreme, Circuit, or City Court, or by a chancellor within the State of Alabama, or by a judge of probate or any justice of the peace within his county. Also by the pastor of any religious society, according to the rules ordained or customs established by such society.

The people called Mennonites, or Quakers, or any other Christian Society, having similar rules or regulations, may solemnize marriage according to their forms by the consent of the parties, published and declared before the congregation assembled for public worship.

The legal fee for celebrating a marriage is $2. The celebrant must, within one month thereafter, certify the fact in writing, giving names of parties, time, and place of ceremony,

which certificate must be recorded in the book kept by the registry of licenses. The judge of probate must keep a book in which all licenses issued by him must be registered, and the fact as to whether the parties were of age.

Marriage of Children.—The age of consent in Alabama is seventeen in males and fourteen in females, and persons under those ages are incapable of contracting marriage. But if the man is under twenty-one and the woman under eighteen, and have not had a former wife or husband, the probate judge must require the consent of the parents or guardians of the minors, either personally or in writing, and if in writing its execution must be proved, and this written consent must be recorded with the license ; and he must also require a bond to the State of Alabama in the penal sum of $200, to be void if there is no lawful cause why such marriage should not be celebrated. The probate judge, for issuing a license contrary to law, forfeits $200 to the parent or guardian. But if the parent or guardian consented, or the judge was misled as to the age of the minor by his or her personal appearance, and he took the precaution to take an affidavit as to the age made by the minor, or some credible person claiming to know the age, to the effect that the minor was of lawful age, the fine cannot be collected.

Forbidden Marriages: Relatives; Miscegenation.—The son must not marry his mother, or step-mother, or the sister of his father or mother, or the widow of his uncle. The brother must not marry his sister or half-sister, or the daughter of his brother or half-brother, or of his sister or half-sister. The father must not marry his daughter or granddaughter, or the widow of his son. No man shall marry the daughter of his wife ; and these provisions apply to illegitimate as well as to legitimate children and other relations. But the issue of such marriages before the same are annulled shall not be deemed illegitimate. Persons knowingly marrying such relatives, on conviction must be imprisoned not less than one nor more than seven years, and the conviction annuls the marriage, and the court must declare it void.

If any white person and any negro, or the descendant of any negro, to the third generation, inclusive, though one ancestor of each generation was a white person, intermarry, each must on conviction be imprisoned not less than two nor more than seven years.

Bigamy.—If any person, having a former wife or husband living, marries another, the punishment on conviction is imprisonment not less than two nor more than five years, unless the accused can show that prior to such second marriage a decree of divorce had been procured from a competent court, dissolving the first marriage and allowing the accused to marry again ; or that the former husband or wife of the accused remained absent from him or her for the last five years, before the second marriage, and the accused at the time of the second marriage did not know such husband or wife was living.

Divorce.—The Court of Chancery has power to grant a divorce absolute to an aggrieved party, if the following causes be shown as grounds therefor : (1) Impotency ; (2) adultery ; (3) voluntary abandonment from bed and board for two years, before suit for divorce ; (4) imprisonment in penitentiary for two years, the sentence being for seven years longer ; (5) a crime against nature, committed either before or after marriage. In favor of the wife, it may be granted for actual violence to her person, attended with danger to life and health, or where there is reasonable ground to apprehend such violence ; in favor of the husband, when the wife was pregnant at time of marriage without his knowledge or agency. Divorce for voluntary abandonment is granted only to one who has resided three years in Alabama, before the suit. If the defendant does not live in Alabama, the person applying for the divorce must have lived there a year. A husband or wife may sue for a separation for cruelty, as well as for any of the grounds for which an absolute divorce may be granted. The judgment of divorce must provide whether or not the guilty party shall or shall not marry again.

ARIZONA.

Arizona is the only place in the United States where a man and woman may become husband and wife without getting married. A law, passed February 27, 1887, provides that all persons who have, prior to that date, lived together *as* husband and wife, and continue to do so for one year after the passage of the act, or until one of the parties shall die, if death occurs before the expiration of one year, shall be considered as having been legally married. The children of such, or of persons living together, who subsequently marry, are legitimate.

All marriages valid where contracted are valid in Arizona.

Since the law does not declare that a marriage shall be void if celebrated without a license, or in the absence of a third person, it may be that parties can marry themselves.

How to Marry.—A license must be issued by the county recorder, and must be recorded by him. All regularly licensed or ordained ministers of the gospel, judges of courts of record, and justices of the peace in their counties are authorized to solemnize marriage. The celebrant must endorse the marriage on the license and return it to the office of the recorder within thirty days ; and this return must also be recorded ; and if the celebrant fails to do so he forfeits $100.

The marriage certificate must also be executed, filed, and recorded pursuant to the act of Congress.[1]

[1] NOTE.—In addition to the recording of the marriage certificate, under the territorial law, every marriage, in every Territory of the United States, must also, by virtue of an act of Congress approved March 3, 1887, be certified, by certificate stating the fact and nature of the ceremony, the full name of each party concerned, the full name of every officer, priest, or person taking part in the ceremony. The certificate shall also be signed by the bride, groom, officer, priest, or person taking part, and such officer, priest, or person must file it in the office of the Probate Court, or court having probate powers in the county or district where the wedding takes place. It shall be immediately recorded and becomes a public record. For failure to comply with these provisions, the punishment, is by fine of not more than $1,000 or imprisonment, not longer than two years, or by both fine and imprisonment.

Marriage of Children.—Males under eighteen and females under sixteen shall not marry. No recorder shall issue a license without consent of parents or guardians of persons under such ages ; if both parents are alive, the consent of the father alone shall be sufficient, unless such parents live apart, and then the consent must be given by the one having custody of the minor. For issuing a license without such consent the recorder or his deputy shall forfeit $100.

Forbidden Marriages : Relatives ; Miscegenation.—Marriages between parents and children, including grandparents and grandchildren of every degree ; between brothers and sisters, of half or whole blood ; between uncles and nieces, aunts and nephews, and between first cousins, are void. The rule extends to illegitimate relatives. Punishment, imprisonment not exceeding ten years.

Marriages of persons of Caucasian blood or their descendants with Africans or Mongolians and their descendants are void.

Bigamy.—Every person having a husband or wife living, who marries another, is guilty of bigamy, unless it is shown that such husband or wife has been absent five successive years without being known to the accused to be living within that time, or that the first marriage has been pronounced void, annulled, or dissolved by judgment of a competent court or other lawful authority. Punishment, fine not exceeding $2,000 and imprisonment not exceeding ten years.

Every person who knowingly marries the husband or wife of another, in a case where such husband or wife would be guilty of bigamy, may be fined not less than $2,000 or imprisoned not exceeding three years.

Divorce—May be had for : (1) incurable impotency or other impediment existing at time of marriage ; (2) excesses ; (3) cruel treatment ; (4) outrage, whether by personal violence or other means. In favor of husband, for wife's adultery or six months' abandonment ; in favor of wife, for husband's adultery, six months' abandonment, habitual intemperance, six months'

wilful neglect to provide; idleness, profligacy, or dissipation. In favor of either, for conviction, after marriage, of felony. Complainant must be a *bona-fide* resident for six months before suit.

ARKANSAS.

This is the only State in which the death penalty is prescribed in connection with marriage. The law declares that "every person who shall take unlawfully, and against her will, any woman, and by force, duress, or menace compel her to marry him, or to marry any other person, or to be defiled, shall suffer death." Bonds must be given to secure a license. A marriage valid in State or country where parties actually resided shall be deemed valid in Arkansas.

How to Marry.—The county clerk must grant a license if assured the parties are legally entitled to it, upon their giving bond in penalty of $100 with one surety to the effect that applicant has a lawful right to the certificate. Applicant may introduce parent or guardian to prove age, and if not of lawful age evidence of consent of parent or guardian, either verbal or written, must be produced. Obtaining license without consent is a misdemeanor, punishable by fine of not less than $10 nor more than $100; party is also liable in damages to person injured. Clerk who issues a license contrary to law is guilty of misdemeanor, and may be fined not less than $100 nor more than $500. The ceremony may be performed by the governor of the State; any justice of the peace in the county where the marriage is solemnized; any regular ordained minister or priest of any religious sect or denomination. But no minister or priest is authorized to act until he shall have recorded in the office of some clerk or recorder in the State his license, or credentials of his clerical character, and obtained a certificate of such record under his hand and seal. Any minister or priest who shall solemnize the rites of marriage without doing so is guilty of a misdemeanor, and liable to a a fine of not less than $100. When the ceremony of marriage is

performed by a priest or minister, it shall be according to the customs of his church or religious society ; when performed by any civil officer, such form shall be observed as the officer shall deem most appropriate. A religious society which rejects formal ceremony may join together in marriage members according to the forms, customs, or rites of the society. Quakers, or Friends, and other societies are included in this provision. The celebrant must endorse the marriage on the certificate, and the bride and groom must return it to the clerk within sixty days, or forfeit their bonds, and may be fined not less than $100 nor more than $500.

Marriage of Children.—The age of consent is fourteen in females and seventeen in males. If contracted by persons under the age of consent, the marriage is void only from the time its nullity shall be declared by a court of competent jurisdiction.

Forbidden Marriages: Relatives; Miscegenation.—Marriages between parents and children, including grandparents and grandchildren of every degree ; between brothers and sisters, of half or whole blood ; uncles and nieces, aunts and nephews ; and between first cousins, including as well such illegitimate relatives, are void, and the offence is a misdemeanor. Marriages between whites and negroes, or mulattoes, are void.

Bigamy.—Where a person having a husband or wife living shall marry, the second marriage shall constitute the crime of bigamy, unless the accused can show that the first marriage is no longer recognized in law as binding, and this may be shown in one of three ways : by reason of absence, non-age, or divorce. As to absence, it must be shown either (1) that the wife or husband of the accused shall have been absent five successive years, without being known to the accused to be living ; or (2) that such person has been absent from the United States for the space of five years. The divorce must have been absolute, and pronounced by a court of competent jurisdiction, either dissolving the prior marriage, or pronouncing it void on

the ground of the nullity of the marriage contract. As to nonage, it must be shown not only that the prior marriage contract was within the age of legal consent, but must have been so declared and annulled by a court of competent jurisdiction.

The punishment is imprisonment for not less than three nor more than seven years.

And if a person who is single shall knowingly marry the husband or wife of another, in any case where such husband or wife would be punishable for bigamy, shall be subject to the same punishment.

Where a husband abandons his wife, or a wife her husband, and resides beyond the limits of Arkansas for five successive years, without being known to such person to be living, their death shall be presumed, and any marriage entered into after five years shall be valid as if husband or wife was dead.

Divorce.—May be obtained also for (1) impotency; (2) adultery; (3) desertion one year; (4) former husband or wife living; (5) conviction of felony; (6) habitual drunkenness one year; (7) cruelty; (8) incurable insanity. One year's residence required.

CALIFORNIA.

In California consent alone will not constitute marriage; it must be followed by a solemnization or by mutual assumption of marital rights, duties, and obligations. All marriages contracted without the State of California, valid where contracted, are declared valid there.

How to Marry.—Parties may marry themselves or they may be married by a judge of the Supreme Court, justice of the peace, priest, or minister of the gospel of any denomination. Consent to, and subsequent consummation of, the marriage may be manifested in any form and proved as any other fact. If parties marry themselves, they must jointly make a declaration showing the names, ages, and residences of the parties, the facts and date of the marriage, and a declaration

that it has not been solemnized. This declaration must be acknowledged and recorded like a deed. Marriages are required to be licensed, solemnized, and recorded ; but the law declares that failure to comply with such provisions will not inviolate a lawful marriage. The license must be issued by the clerk of the county in which the marriage is celebrated. No particular form of ceremony is required, but the parties must declare in presence of the celebrant that they take each other as husband and wife. The celebrant must require the license to be produced. If he doubts the correctness of the facts therein stated, he must satisfy himself and may administer oaths and examine parties and witnesses. He must attach to the license a certificate showing the fact, time, and place of solemnization, the names and places of residence of one or more witnesses, and return it within thirty days to the county recorder.

If no record of a marriage prior to 1874 is known to exist, parties may join in a written declaration showing their names, ages, and residences, the fact of the marriage, and that no record thereof was known to exist. It must be acknowledged and attested by at least three witnesses and recorded like a deed.

Where persons, not minors, have been living as husband and wife, they may be married by any clergyman, without a license, who must give the parties a certificate and make an entry of it in the record of the church of which he is a representative. No other record need be made.

Marriage of Children.—The age of consent is eighteen in males and fifteen in females, but if the male is under twenty-one and the female under eighteen, and neither is a widow or widower, the clerk shall not issue a license unless the parents of such person, or one of such parents, or guardian, or person having charge of such minor, shall consent thereto in writing. The clerk shall file the consent. Before issuing the license the clerk is authorized to examine the parties and witnesses and to receive affidavits as to the facts, and he must state them in the license.

Forbidden Marriages: Relatives; Miscegenation.—Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of half as well as whole blood, uncles and nieces, or aunts and nephews, are incestuous and void, whether such relations are legitimate or illegitimate. Either party may proceed by action to have such marriage so declared. The punishment for incest is imprisonment not exceeding ten years.

Marriage of white persons with negroes or mulattoes is void. The county clerk is forbidden to issue a license authorizing the marriage of white persons with a negro, mulatto, or Mongolian.

Bigamy.—Marriage during the life of a former husband or wife is void, unless the first marriage has been annulled or dissolved, or such former husband or wife has been absent and not known to the party to be living for five successive years immediately preceding such subsequent marriage, or who has been believed by such party to be dead at the time of the second marriage. In either case the marriage is valid until its nullity is declared by a competent tribunal. The party marrying again will be guilty of bigamy unless it can be shown that the absence has continued for five successive years, such absentee not being known to the accused to be living within that time; or that the former marriage has been pronounced void, annulled, or dissolved by a competent court. The punishment is by fine not exceeding $2,000 and imprisonment not exceeding three years. Every person knowingly marrying a husband or wife of another where the person so married would be guilty of bigamy, is liable to a fine of not less than $2,000 or imprisonment not exceeding three years.

Divorce.—May be had for: (1) adultery; (2) extreme cruelty; (3) wilful desertion; (4) wilful neglect; (5) habitual intemperance,—last three causes must continue for one year; (6) conviction of felony. Six months' residence required before suit.

COLORADO.

The laws of Colorado declare that all marriages, valid where contracted, shall be valid in Colorado, except that bigamy and polygamy are prohibited. The only marriages declared void in terms are those involving incest, or those contracted between white persons and negroes or mulattoes.

How to Marry.—A license must be issued by the county clerk only to parties legally entitled to marry. A form of the license is prescribed by the statute. Clerk's fee for license, $1. If the clerk does not know of his own knowledge that the parties are competent, he may administer oaths, and must take the affidavits of the applicants and such other persons as he may deem proper, and of any persons whose testimony may be offered, and if the affidavits show the parties to be competent he should issue the license, and the affidavit shall be his warrant against fine or forfeiture. Issuing a license to parties one or both of whom are not entitled to it, without taking such affidavits, constitutes a misdemeanor, punishable by fine of $100. If parties swear falsely to secure a license, they are guilty of perjury.

Marriage may be celebrated by any judge or justice of the peace, clergyman or licensed preacher of the gospel. The celebrant must annex his certificate of the marriage to the license and return it within thirty days to the clerk. Failure to do so is a misdemeanor punishable by a fine of not less than $20 nor more than $50. He must also keep a record of all marriages, and, within three months, transmit a certificate of every marriage, containing both Christian and surnames of the parties, to the county clerk of the county where the marriage took place. The celebrant who solemnizes a marriage without a license, or with knowledge that either party is incompetent to marry, is guilty of a misdemeanor, and is liable to a fine of not less than $50 nor more than $200. If he has no personal knowledge of the competency of either of the parties he may rely on the license. All returns must be recorded by the

clerk within a month after receiving the same. For failure to do so he becomes liable to forfeit $100. He must keep also a file of every marriage license returned to him. Making a false return or false record is a misdemeanor punishable by a fine of not less than $100, and imprisonment not less than three months.

Marriage of Children.—No person shall join in marriage any male under the age of twenty-one or female under the age of eighteen, who has not been previously married, without the consent of the parents or guardian under whose care and government such minor may be. But if the parties have no parents or guardian in Colorado, the celebrant shall exercise his own judgment in uniting them in marriage. A violation of these provisions is a misdemeanor, punishable by a fine not exceeding $500.

Forbidden Marriages: Relatives; Miscegenation.—All marriages between parents and children, including grandparents and grandchildren of every degree; between brothers and sisters, of half as well as whole blood; and between uncles and nieces, aunts and nephews, including illegitimate as well as legitimate children and relatives, are incestuous and void. Persons knowingly marrying such relatives, or performing the ceremony, are guilty of a misdemeanor punishable by fine not less than $50 nor more than $500, or imprisonment not less than three months nor more than two years. The Criminal Code of Colorado also includes first cousins in this list of void and criminal marriages.

Marriage between negroes or mulattoes and white persons is void, and punishable in the same manner as marriage with relatives. But people living in that portion of Colorado acquired from Mexico may marry according to the custom of that country.

Bigamy.—Having two wives or two husbands at the same time, knowing that a former husband or wife is still alive, is bigamy, unless the accused can show that the former husband or wife shall have been continually absent for the space of five

years prior to the second marriage, the accused not knowing such husband or wife to be living within that time; or that the accused has been divorced by lawful authority; or that the former marriage has been lawfully declared void. If such second marriage shall have taken place without the State of Colorado, cohabitation by the parties afterwards in that State constitutes bigamy, and may be tried in the county where the crime was committed. The punishment is by fine not exceeding $1,000, and imprisonment not exceeding two years.

If an unmarried person shall knowingly marry the husband or wife of another, the penalty is by fine of not more than $500, or by imprisonment not exceeding one year.

Divorce—May be had for: (1) impotence at time of marriage which continues, or impotency occurring after marriage in consequence of immoral or criminal conduct; (2) if he or she had a wife or husband living at the time of marriage; (3) adultery; (4) wilful desertion and absence from husband or wife for one year, or where either wilfully deserts the other and departs from the State without any intention of returning; (5) where a husband, being in good bodily health, shall fail to make reasonable provision for the support of his family for one year; (6) habitual drunkenness for one year; (7) extreme cruelty; (8) conviction of felony or other infamous crime.

CONNECTICUT.

In this State the law is silent on many points pertaining to matrimony. By a law passed in 1876, it is declared that where the parents of children born out of wedlock subsequently marry, and recognize such children as theirs, they shall be deemed legitimate, and inherit equally with other children.

How to Marry.—No person shall be married until one of them shall inform the registrar of the town in which the marriage is to be celebrated, or, in case of his inability, the town-clerk, of the name, age, color, occupation, birthplace, residence, and condition (whether single, widowed, or divorced)

of each ; and the registrar may administer oaths in all cases coming before him. Such registrar or town-clerk shall thereupon issue his certificate that the parties therein named have complied with the foregoing requirements, which certificate shall be a license for any person, authorized to celebrate marriage, to join in marriage, within said town only, the parties therein named. But no certificate shall be issued to a minor without the consent of parent or guardian. See "Marriage of Children."

All judges, justices of the peace, and ordained or licensed clergymen belonging to Connecticut or any other State, so long as they continue in the work of the ministry, may join persons in marriage. And all marriages attempted to be celebrated by any other person shall be void ; but all marriages which shall be solemnized according to the forms and usages of any religious denomination in the State of Connecticut shall be valid.

Any person who shall join any persons in marriage without having received a certificate issued by the registrar or town-clerk, shall forfeit $100. And whoever undertakes to join persons in marriage, knowing that he is not authorized so to do, shall be fined not more than $500, or imprisoned not more than one year, or both.

Every person who shall join any person in marriage, shall certify, upon the license certificate, the fact, time, and place of such marriage, and return it to the registrar of the town where it was issued, before or during the first week of the month next succeeding such marriage, and upon failure thereof, shall forfeit $10. The fee for issuing certificate of license to marry is fifty cents, and for recording same ten cents.

Marriage of Children.—No marriage certificate shall be issued if either of the parties is a minor, under the control of a parent or guardian, until such parent or guardian shall give to the registrar or town-clerk his consent ; and any registrar or town-clerk who shall knowingly issue such certificate, without such consent, shall forfeit to the State $100. Reg-

istrars of marriages are now authorized to administer oaths in all cases coming before them.

Forbidden Marriages: Relatives.—No man shall marry his mother, grandmother, daughter, granddaughter, sister, aunt, niece, step-mother, or step-daughter; no woman shall marry her father, grandfather, son, grandson, brother, uncle, nephew, step-father, or step-son; and if any man or woman shall marry within the degrees aforesaid, such marriage shall be void. The punishment for marrying such relatives is imprisonment for not less than two nor more than five years.

Bigamy.—Every person who shall marry another, if either is lawfully married, and they shall live together as husband and wife, or shall so marry another in any other State or country, in violation of the laws thereof, if the persons so married shall knowing cohabit and live together in Connecticut as husband and wife, shall be imprisoned in the State prison not more than five years. The statute is silent as to what will constitute a defense. These points rest in the judicial decisions. The accused must show that when the second marriage took place, neither the accused nor the other party to the marriage was at that time lawfully married.

Divorce—May be granted for: (1) adultery; (2) fraudulent contract; (3) wilful desertion for three years, with total neglect of duty; (4) seven years' absence, during all which period the absent party has not been heard from; (5) habitual intemperance; (6) intolerable cruelty; (7) sentence to imprisonment for life; (8) any infamous crime involving a violation of conjugal duty and punishable by imprisonment in the State prison. Ninety days must elapse from return day in complaint before petition can be heard. Three years' residence required.

DAKOTA.

By Act of Congress approved on the 22d of February, 1889, Dakota was admitted to the Federal Union as two States, to be known as North Dakota and South Dakota. Constitu-

tions for these new commonwealths are now being formulated. The law of the territory, which it is fair to presume will be the law of the States, is as follows :

How to Marry.—Consent, followed by solemnization or mutual assumption of matrimonial duties or obligations, constitutes marriage. It may be solemnized by a justice of the Supreme Court, justice of the peace, a mayor, minister of the gospel, or priest of any denomination ; or parties may marry themselves. Indians may be married by the peace-makers, their agent, or superintendent of Indian affairs. No particular form is necessary, but the parties must declare in the presence of the celebrant and of at least one witness, that they take each other as husband and wife. The celebrant is required to ascertain to his satisfaction : (1) the identity of the parties; (2) their real and full names and places of residence ; (3) that they are of sufficient age to contract ; (4) the name and residence of the witness or two witnesses, if more than one is present. He must enter these facts also in a book kept by him. He must furnish a certificate thereof to the parties, and also a statement that they were known to him or were satisfactorily proved by the oath of a party known to him to be the persons described in the certificate, and that after due inquiry there appeared no lawful impediment to the marriage. This certificate may within six months be filed with the clerk of the city or town where the marriage was solemnized or where either party resided, or the register of deeds of the county, and must be recorded by such officer. [It must be recorded also pursuant to the Act of Congress in the Probate Court.—See note foot of page 194.] Where the celebrant is a minister or priest, the certificate must also be accompanied by the certificate of a magistrate residing in the same town or county with the clerk, that such celebrant is personally known to the magistrate, and has acknowledged the execution of the certificate in his presence, or that its execution has been proved to him by the oath of a person known to the magistrate, who saw it executed.

Where the parties marry themselves, they must make a written declaration to that effect showing the fact, time, and place of the marriage ; the names, ages, and residences of the parties ; and that the marriage has not been solemnized. The declaration must be proved or acknowledged and recorded in like manner as a deed to land.

Every person who falsely personates another, and in such assumed character marries or assumes to marry, or to sustain the marriage relation towards another, on conviction becomes liable to imprisonment not exceeding ten years.

Marriage of Children.—Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of contracting and consummating marriage. The celebrant who solemnizes a marriage, where either party is known to him to be within the age of legal consent, is guilty of a misdemeanor. A misdemeanor is punishable by imprisonment not exceeding one year, or by fine not exceeding $500, or by both fine and imprisonment.

Forbidden Marriages : Relatives.—Marriage between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, or aunts and nephews, and between cousins of the half as well as of the whole blood, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate. The punishment for incest is imprisonment not exceeding ten years.

Bigamy.—A person having a husband or wife living, who marries again, is guilty of bigamy, unless the accused can show, either that the former husband or wife has been absent five successive years without being known to the accused to be living within that time, or has been continuously without the United States for five successive years, or that the former marriage has been pronounced void, annulled, or dissolved by the judgment of a competent court, unless such marriage was

dissolved upon the ground of the adultery of the accused. The punishment is by imprisonment not exceeding five years.

Every person knowingly or wilfully marrying the husband or wife of another where the person so married would be guilty of bigamy, is punishable by imprisonment not exceeding five years in territorial prison, or not exceeding one year in county jail ; or by fine not exceeding $500, or by both fine and imprisonment.

Divorce.—May be granted for : (1) adultery ; (2) extreme cruelty ; (3) conviction for felony ; (4) for either wilful desertion, wilful neglect, or habitual intemperance continuing for one year preceding the suit. Ninety days' residence required. Guilty party can not marry any person except innocent party, until death of innocent party.

DELAWARE.

Delaware legislation makes it incumbent upon the groom to give bonds to the State in the penal sum of $200 upon applying for his marriage license, unless the banns have been published in the church in the locality where the bride resides at least two Sabbaths, and no objections have been made. Weddings in almshouses are prohibited, and if a pauper marries he shall be dismissed and the State will be deprived of his services, and parties aiding therein become liable to a fine of $50.

How to Marry.—Whether or not a marriage license will be required will depend upon whether the banns of marriage have been published, or whether the person is a white person. If the banns shall have been published at some place of stated religious worship, within the hundred of the woman's residence, on two Sabbaths, immediately after divine service, and no objection be made to such marriage, a license will not be required. Every preacher of the gospel, ordained or appointed according to the rules of the church to which he belongs, and the mayor of the city of Wilmington and the city of New Castle have authority to solemnize marriages. It may also be solemnized or contracted accord-

ing to the forms and usage of any religious society where either of the parties belongs. But unless the banns have been published as above stated, such preacher or mayor shall not solemnize a marriage to which a white person is a party, without a license. It must be issued by the clerk of the peace in the county, who must collect a fee of $4 therefor for the use of the State. He has power also to appoint justices of the peace in his county, not less than six, to distribute marriage licenses, and it shall not be lawful for any other person than such clerk or justice to distribute them. The clerk or justice shall take from the applicant a bond to the State of Delaware in the penal sum of $200, containing this condition : "The condition of this obligation is such that if Romeo Ardent and Juliet Lightwing [naming prospective bride and groom] may lawfully unite themselves in marriage, and if there be no legal objection to celebrating the rites of marriage between them, then the said obligation shall be void ; otherwise, in force." All bonds must be filed in the clerk's office in alphabetical order. The fee for solemnizing a marriage shall be $1.50.

Every preacher, mayor, and religious society shall keep a record of all marriages and the date thereof, and shall every three months return every marriage certificate to the recorder of deeds of the county where the marriage was celebrated, who shall record and file the same according to dates, and for failure to do so shall forfeit $20. If any person not authorized as above shall falsely solemnize a marriage, he is guilty of a misdemeanor, and liable to a fine of $500, and such marriage shall be void, unless it be in other respects lawful, and be consummated with the full belief of either of the parties in its validity. Negroes or mulattoes may be married without license or publication of banns.

Marriage of Children.—A marriage, if the male be under twenty-one years, or the female under eighteen, shall not be solemnized without the consent of the father, or, if there be no father, the mother or guardian of the minor ; and any person knowingly and wilfully solemnizing such marriage, without such consent, shall be liable in damages to the party aggrieved.

But a divorce will not be granted on the ground of want of age, unless it is shown that the husband was under eighteen and the wife under sixteen, and the marriage after the parties passed those ages was not voluntarily ratified.

Forbidden Marriages: Incest; Miscegenation.—No man shall marry his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, son's wife, sister's son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, mother, step-mother, wife's mother, daughter, wife's daughter, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter. No woman shall marry her relative or connection corresponding with either of the foregoing prohibitions. And if such marriage be solemnized, it shall be void, and the parties deemed guilty of a misdemeanor and fined $100. The celebrant or other person aiding it shall be liable to same fine. If such marriage is contracted elsewhere, and the parties come into Delaware and live as husband and wife, they are liable to the same fine.

Marriage is unlawful between a white person and a negro or mulatto, and shall be void; and the parties solemnizing or aiding shall be liable to same penalty. If such persons marry elsewhere and come into Delaware they are liable to such fine.

If any pauper supported in the almshouse shall marry, he shall be dismissed. If the overseer consent to such marriage he shall be removed, and the minister knowingly solemnizing it shall be fined $50.

Bigamy.—If any person having contracted marriage shall in the life-time of his or her husband or wife marry another, or if any unmarried person shall marry with a person having at the time a husband or wife living, and such fact be known to such unmarried person, he or she shall be deemed guilty of bigamy, unless the accused can show that the husband or wife at the time of the second marriage shall have been absent five years, and during that time the accused shall have received no intelligence of his or her being alive; or if there shall have

been other good ground to believe the former husband or wife dead, or the former marriage shall have been dissolved. The punishment is by fine not less than $400 nor more than $2,000, and imprisonment not less than three months nor more than one year.

Any inhabitant of Delaware who goes out of the State and commits bigamy, with intent to return, and shall return, he shall be deemed guilty, and on conviction punished as above.

Divorce.—The peculiar rule of Delaware law with respect to foreign divorces, declares that when an inhabitant of Delaware goes out of the State to obtain a divorce for any cause occurring in Delaware, or for any cause not authorized by the laws of Delaware, a divorce so obtained shall be of no force or effect in Delaware. In all other cases, if the court had jurisdiction of the subject-matter, and of both parties, a divorce lawfully granted elsewhere will be valid.

The grounds for divorce absolute are: (1) adultery; (2) desertion for three years; (3) drunkenness; (4) impotency of either party at time of marriage; (5) extreme cruelty; (6) conviction in or out of State, after marriage, for felony. whether the crime was committed before or after the marriage, Divorce from bed and board may be decreed in discretion of court for: (1) procurement of marriage by fraud; (2) want of age, where husband was under eighteen, or wife under sixteen, on wedding-day, and it appears there was no voluntary ratification after those ages were reached; (3) neglect to provide for wife necessaries suitable to her condition for three years.

FLORIDA.

Marriage laws of Florida since 1866 have been made general, and apply equally to the white and colored inhabitants of the State. Clandestine marriages subject the parties to severe penalties. Children born out of wedlock become legitimate by the subsequent marriage of their parents.

How to Marry.—All regularly ordained ministers of the gospel in communion with some church, judges of the Circuit

Courts, judges of the County Court, notaries public, and justices of the peace are authorized to solemnize the rites of the matrimonial contract, but must before doing so require of the parties a marriage license. Prior to June, 1887, licenses were issued by the clerk of the Circuit Court of the county where the bride resided, but since May 27, 1887, all marriage licenses are required to be issued by the county judges of Florida, and after the marriage is solemnized such licenses shall be returned, under the certificate of the person who executed the same, within ten days after its execution, to the office of the judge who issued it, and shall be by him recorded in the record of marriage licenses. The judge for issuing the license is entitled to a fee of $2. If the celebrant shall fail to require the production of such license he shall be subject to a fine of not more than $1,000 in the discretion of the court.

Marriage of Children.—If either applicant is under the age of twenty-one, and has not before been married, the judge must require satisfactory evidence of the consent of his or her guardian before issuing a license. The celebrant must, before performing the ceremony, require the production of such license, and for failure to do so, on conviction, shall be subject to a fine of not more than $1,000 in the discretion of the court.

Whoever fraudulently and deceitfully entices or takes away any unmarried female, under the age of sixteen years, from her father's house, or wherever else she may be found, without the consent of the parent, guardian, or master, if any, under whose care or custody she is living, for the purpose of effecting a clandestine marriage of such female, without such consent, shall be imprisoned not exceeding one year, or fined not exceeding $1,000, or both fined and imprisoned.

Forbidden Marriages: Relatives; Miscegenation.—Persons within the degrees of consanguinity, within which marriages are prohibited or declared by law to be incestuous and void, who intermarry, shall be punished by imprisonment in the State penitentiary not exceeding twenty years, or in the

county jail not exceeding one year. The statute does not define the degrees of consanguinity covered by the prohibition. Hence the better opinion is that the prohibition embraces such marriages as are forbidden by the Levitical law.

If any white man shall intermarry with a negro, mulatto, or any person who has one eighth of negro blood in her, or if any white woman shall intermarry with a negro, mulatto, or any person who has one eighth of negro blood in him, is guilty of felony, and on conviction shall be fined not more than $1,000 nor less than $50, or imprisoned not more than ten years nor less than six months at the discretion of the court. For issuing a license to such persons the fine is not less than $50 nor more than $1,000, or imprisonment not less than three months nor more than two years ; and the celebrant may be fined not exceeding $1,000 or imprisoned not more than one year, or both, in the discretion of the court.

Bigamy.—Whoever, having a former husband and wife living, marries another, is guilty of polygamy, and may be imprisoned in penitentiary not exceeding five years, or in the county jail not exceeding one year, or fined not exceeding $500, unless the accused can show that his or her husband or wife has been continually beyond sea, or has voluntarily withdrawn and remained absent for three years, the accused not knowing such absent one to be living within that time, or that the accused has been legally divorced, and is not the guilty cause of the divorce.

Divorce.—May be granted upon the following grounds : (1) parties related within degrees forbidding marriage ; (2) impotency ; (3) adultery ; (4) bigamy (divorce for this cause does not render children illegitimate) ; (5) extreme cruelty of either party ; (6) habitual indulgence of violent and ungovernable temper ; (7) habitual intemperance ; (8) wilful, obstinate, and continued desertion by either party for one year. Two years' residence required. A citizen of Florida, who has been such for two years, may procure a divorce, notwithstanding his or her husband or wife may have obtained divorce in an-

other State or country. This law is designed, no doubt, to cure defects and remove doubts concerning the divorce in the foreign state. The parties may be witnesses, but the divorce cannot be granted on testimony of a husband or wife alone.

GEORGIA.

Matrimony is especially commended by the statutes of Georgia, which declare in so many words that marriage is encouraged by law, and every effort to restrain or discourage marriage by contract, condition, limitation, or otherwise, is invalid and void. And if a man or woman is indebted to the other, and they marry, the marriage releases the debt, unless it is contracted in contemplation of such union, as a marriage settlement. All marriages solemnized in another State by parties intending at the time to reside in Georgia shall have the same legal consequences and effect as if solemnized in Georgia. It is expressly declared, also, that parties residing in Georgia cannot evade any of the provisions of its laws as to marriage by going into another State to marry.

How to Marry.—The provisions of law as to procuring a marriage license has been held by the courts to be simply declaratory, and failure to comply with them will not invalidate the marriage. To constitute a valid marriage in Georgia the bride and groom must be able to contract; there must have been an actual contract between them, consummated according to law. The groom must be not under seventeen, and the bride not under fourteen. They must be of sound mind, there must be no prior marriage existing as to either undissolved, and they must not be related by blood or marriage, as mentioned below. Neither must be afflicted with impotency. The consent must be voluntary, and without fraud practised upon either. Drunkenness at the time of marriage, brought about by art or contrivance to induce consent, shall be held a fraud. Marriages of persons unable or unwilling to contract, or fraudulently induced to contract, are void; but issue, before they are declared void by a competent court, are legitimate.

If there has been unwillingness or fraud, subsequent consent and ratification freely and voluntarily made, accompanied by cohabitation, makes the marriage valid. Marriage may be solemnized by any judge, justice of the peace, or minister of the gospel, and licenses shall be granted directed to such persons by the ordinary or his deputy of the county where the bride resides, if she lives in Georgia. The license must require the celebrant to return it to the ordinary, with his certificate thereon as to the fact and date of marriage, and it shall be recorded "Marriage of persons whose banns have been published," shall be certified to the ordinary of the county where such banns were published, who shall record the same in the same book with marriage licenses.

For marrying persons without a license, or whose banns have not been published, or where either party within his knowledge is an idiot, lunatic, or subject to any other legal disability, the celebrant shall forfeit $500, or may be convicted of a misdemeanor, and punished by a fine not exceeding $1,000, or imprisonment not exceeding six months, or to work in the chain-gang not exceeding twelve months, or any one or more of these punishments.

Upon request, the ordinary may direct the marriage license to any Jewish minister, or other person of any religious society or sect, authorized by the rules of such society to perform the marriage ceremony, who shall make return thereon as above required.

A marriage valid in other respects, and supposed by the parties to be valid, shall not be affected by a want of authority in the minister or justice to solemnize the same; nor shall such objection be heard from one party who has fraudulently induced the other to believe that the marriage was legal. The ordinary or his deputy must inquire as to ages of all persons for whom licenses are asked, and if there is ground for suspicion that the female is under eighteen, he must refuse the license until written consent of parent or guardian shall be produced and filed. For knowingly granting a license without

such consent, or without inquiry into the facts, or to a female to his knowledge domiciled in another county, he shall forfeit $500.

Marriage of Children.—Males under the age of seventeen and females under the age of fourteen are unable to contract marriage, and their marriages are void; but children born before the same are so declared by the court, are legitimate. The ordinary, or his deputy, who knowingly grants a license to such, without inquiring into the fact as to age, or without the written consent of parent or guardian filed in his office, shall forfeit $500.

Forbidden Marriages: Relatives; Miscegenation.—A man shall not marry his step-mother, or mother-in-law, or daughter-in-law, or step-daughter, or granddaughter of his wife. A woman shall not marry her corresponding relatives. If any person shall intermarry within the Levitical degrees of consanguinity or within any of the relationships by affinity, such marriage shall be void, and is punishable by imprisonment and labor for not less than one nor more than three years.

The marriage relation between white persons and persons of African descent is forever prohibited, and such marriages shall be null and void. If any officer shall knowingly issue a license to parties, either of whom is of African descent and the other a white person, or if any officer or minister shall marry such persons, it is a misdemeanor, punishable in the same way as in cases where the marriage is without a license, or where the banns have not been published.

Bigamy.—If any person or persons, being married, marry any person or persons, the lawful husband or wife being alive, and knowing that such lawful husband or wife is living, such marriage shall be void, and shall be punishable by confinement at labor in the penitentiary for not less than two nor more than four years; but five years' absence of the husband or wife, and no information of the fate of such, shall be sufficient cause of acquittal. But the children of such bigamous

marriage, born before the prosecution, or within the ordinary term of gestation thereafter, shall be deemed legitimate. And if any man or woman unmarried, shall knowingly marry the husband or wife of another, the punishment is imprisonment for not less than one nor more than three years.

Divorce.—May be absolute or limited. Grounds of absolute divorce are : (1) marriage within prohibited degrees ; (2) mental incapacity at time of marriage ; (3) impotency at time of marriage ; (4) force, menace, duress, or fraud in obtaining marriage ; (5) pregnancy at time of marriage unknown to husband ; (6) adultery ; (7) desertion by either, wilful and continued for three years ; (8) conviction of an offense involving moral turpitude, and sentence to penitentiary two years or longer. Limited divorce may be had for any cause sufficient in England prior to May 4, 1784.

In case of cruelty or intoxication of either party, the jury may grant either an absolute or limited divorce. The concurrent verdict of two juries at different terms of court is necessary for divorce absolute ; but a limited divorce may be had on verdict of one jury. The jury rendering the final verdict shall determine the rights and disabilities of the parties.

IDAHO.

If either party is incapable of consent for want of age, of understanding, or from physical causes of entering into the married state ; or if such consent is obtained by fraud or force, it is ground to have the marriage annulled, but it will be deemed valid until so annulled. Marriages contracted out of Idaho, if valid where contracted, are valid in Idaho.

How to Marry.—Marriage must be solemnized, authenticated, and recorded in the mode prescribed by the statute, but non-compliance with the provisions of the statute will not invalidate any lawful marriage. Consent alone will not constitute marriage ; it must be followed by a solemnization or by a mutual assumption of marital rights, duties, or obligations. Any unmarried male of the age of eighteen or upwards and

any unmarried female of the age of sixteen or upwards, not otherwise disqualified, are capable of contracting and consummating marriage. Consent to, and consequent consummation of marriage, may be manifested in any form, and may be proved as facts in other cases.

Marriage may be solemnized by a justice of the Supreme Court, district or probate judge, the governor, a justice of the peace, mayor, priest or minister of the gospel of any denomination. No particular form for the ceremony is required, but the parties must declare, in the presence of the celebrant, that they take each other as husband and wife. The celebrant may administer oaths and examine the parties and witnesses to satisfy himself that the parties are legally qualified to marry. He must be assured of the identity of the parties, their real and full names and places of residence, and that they are of sufficient age to be capable of contracting marriage.

Every celebrant must make a record of the marriage, and within thirty days thereafter must deliver, to the recorder of the county where the marriage took place, a certificate under his hand, containing the names and residences of the parties, and of at least two witnesses present, and of the time and place of such marriage; and when consent of parent or guardian is necessary, stating that it is duly given. The recorder must record the certificate, and demand fee of $1. For failure to deliver certificate, or for failure to record same, the celebrant or recorder, as the case may be, must forfeit $20. [It must be recorded also, pursuant to the Act of Congress, in the Probate Court. See note foot of page 194.] Celebrant is entitled to fee of $5, but may receive any greater sum voluntarily given.

Wilfully making a false return of a marriage or pretended marriage, or wilfully making a false record of any return, is a felony, and is punishable by imprisonment not exceeding five years, or by fine not exceeding $5,000, or by both fine and imprisonment.

Whoever falsely personates another, and in such assumed

character marries, or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

Taking a woman unlawfully and against her will, and by force, menace, or duress compelling her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment not less than two nor more than fourteen years.

No marriage solemnized by any person professing to be a judge, justice, or minister, is deemed void on account of want of jurisdiction or authority, if consummated with full belief on part of the parties, or one of them, that they have been lawfully joined in marriage.

Every person who undertakes or pretends to join others in marriage, knowing he is not authorized to do so, or knowing of any legal impediment thereto, is guilty of misdemeanor; and is punishable by imprisonment in county jail not exceeding six months, or by fine not exceeding $300, or by both fine and imprisonment.

Marriage of Children.—Any unmarried male of the age of eighteen, and any unmarried female of the age of sixteen, and not otherwise disqualified, are capable of consenting to and consummating marriage. A marriage by persons under those ages, without consent of parents or guardian, may be annulled by the court, but it is a good marriage until annulled; but a voluntary ratification after reaching the age of consent will render the marriage valid. Whoever undertakes to joins persons in marriage, knowing of any legal impediment thereto, such as infancy or non-age, is guilty of a misdemeanor, and may be imprisoned not exceeding six months, or fined not exceeding $300, or both fined and imprisoned.

Forbidden Marriages: Relatives; Miscegenation.—Marriages between parents and children, ancestors, and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces and aunts and nephews, are incestuous and void

from the beginning, whether the relationship is legitimate or illegitimate. The punishment is imprisonment not more than ten years.

All marriages of white persons with negroes or mulattoes are illegal and void.

Bigamy.—A subsequent marriage contracted by any person during the life of a former husband or wife, is illegal and void from the beginning, unless the former marriage has been annulled, or the former husband or wife was absent and not known to the accused to be living for five successive years; or was generally reputed, and believed by such person to be dead; and in either case the second marriage is valid until it is annulled by the court. The punishment for bigamy is by fine not exceeding $100, and imprisonment not less than one nor more than five years. And if the second marriage takes place without the territory of Idaho, cohabitation within the territory, after such second marriage, constitutes the crime of bigamy. Any unmarried person marrying one already married knowingly, the penalty is by fine not less than $1,000, or by imprisonment not less than one nor more than two years.

Divorce.—May be granted for: (1) adultery; (2) extreme cruelty; (3) wilful desertion, wilful neglect, or habitual intemperance for one year; (4) conviction of felony. Six months' residence required.

ILLINOIS.

Illinois statutes declare what is understood without express declaration,—that no insane person or idiot shall be capable of contracting marriage. A child born out of wedlock, whose parents afterwards marry, and whose father has acknowledged the child, shall be deemed legitimate. An effort is being made to amend the law so as to prohibit divorced persons from marrying again within the time fixed by the court, which shall not be less than one nor more than ten years, and making a violation of the decree bigamy.

How to Marry.—The parties must obtain a license from the county clerk of the county where the wedding is to take place. The form of the license is prescribed in the statute.

For the purpose of ascertaining ages, the county clerk may examine either party or witnesses under oath. The marriage may be celebrated by a minister of the gospel in regular standing, a judge of any court of record, a justice of the peace, or any superintendent of any public institution for the education of the deaf and dumb in Illinois. Quakers may be married by making known their intentions to a standing committee of an official meeting at least one week before the wedding, and by appearing in a public meeting or private gathering before official witnesses of said body, with a certificate setting forth the names and residences of the bride and groom and parents of each, if living, and the official witnesses, which shall be publicly read by one of the witnessing parties, and duly recorded in the records of the society. All persons belonging to any religious society, church, or denomination may celebrate their marriage according to the rules and principles of such religious society, church, or denomination. Whoever celebrates the marriage must within thirty days make certificate thereof, and return it with the license, if one has been issued, to the clerk of the county where the wedding took place ; and for failure to do so, the celebrant shall forfeit $100. The county clerk must register the same ; and for neglect so to do for thirty days (his fees being paid) he shall forfeit $100. For celebrating a marriage without a license the penalty is $100 for each offense.

Marriage of Children.—Male persons over seventeen and females over fourteen may contract and be joined in marriage. But if any county clerk shall issue a license for the marriage of a man under twenty-one, or a woman under eighteen, without the consent of his or her father, or, if he is dead or incapable, or not residing with his family, of his or her mother or guardian, if he or she has one, he shall forfeit $300 to such parent or guardian.

Forbidden Marriages: Relatives.—Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, and between cousins of the first degree, are declared to be incestuous and void. And this prohibition extends to illegitimate as well as legitimate children and relations. The punishment is imprisonment not exceeding ten years; and the persons convicted shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust, or profit, of voting at any election, or serving as a juror, unless restored to his rights by a pardon or otherwise according to law.

Bigamy.—Whoever, having a former husband or wife living, marries another, or lives with such second husband and wife in Illinois, is guilty of bigamy, unless the accused can show that his or her wife or husband has been continually absent for five years together prior to the second marriage, and the accused did not know such husband or wife to be living during that time, or that the accused has been lawfully divorced, or the prior marriage annulled. The punishment is imprisonment not less than one nor more than five years, and a fine not exceeding $1,000, and the person convicted shall be deemed forever infamous, and barred from voting or holding any office, unless such person shall be restored to such rights by a pardon or according to law.

If any unmarried person knowingly marries the husband or wife of another, the punishment is by fine not more than $500 or imprisonment in the county jail not exceeding one year, or both fine and imprisonment.

Divorce.—May be granted for: (1) impotency; (2) adultery; (3) on the ground that another husband or wife was living at time of marriage; (4) desertion for two years without reasonable cause; (5) habitual drunkenness for two years; (6) an attempt on the life of the other by poison, or other means showing malice; (7) extreme and repeated cruelty; (8) con-

viction of felony or other infamous crime. One year's residence required. Parties may be witnesses, but must be corroborated. Jury may be demanded by either party.

INDIANA.

Indiana law declares marriage to be a civil contract into which males of the age of eighteen and females of the age of sixteen, not nearer of kin than second cousins, and not having a husband or a wife living, are capable of entering. If a man in Indiana leaves land or other property to his widow in his will, with a condition in restraint of marriage, the gift of land or property will stand, but the condition will be void. If a man in Indiana shall marry the mother of an illegitimate child, and acknowledge it as his own, such child becomes legitimate. The following marriages are declared void: (1) Where either party had a husband or wife living at the time of such marriage; (2) where one party is white and the other is possessed of one eighth or more of negro blood; (3) where either party is insane or idiotic at the time of marriage. All marriages prohibited by law on account of consanguinity, affinity, difference of color, or when either party thereto has a former husband or wife living, are declared to be absolutely void, without any legal proceedings. The issue of a marriage, void on account of consanguinity, affinity, or difference of color, are deemed legitimate. And where parties to a marriage, void because a former marriage exists undissolved, contracted the void marriage in the reasonable belief that such disability did not exist, the issue begotten before the discovery of such disability by such innocent party shall be deemed legitimate. And where a marriage is declared void by reason of want of age or understanding, the issue of such marriage, begotten before the same is annulled, shall be legitimate.

How to Marry.—Before any persons, except members of the Society of Friends, shall be joined in marriage, they shall produce a license from the clerk of the Circuit Court of the county where the bride resides, directed to any person

empowered by law to solemnize marriages, authorizing him to join the persons therein named as husband and wife. Persons so empowered are ministers of the gospel and priests of every church in Indiana, judges of courts of record and justices of the peace within their respective counties, the Society of Friends and German Baptists, according to the rules of their societies; but no marriage, legal in other respects, shall be void on account of the incapacity of the person solemnizing the same. And no marriage shall be void or voidable for want of license or other formality required by law, if either of the parties thereto believed it to be a legal marriage at the time. A certificate of the marriage must be filed by the party solemnizing it in the office of the county clerk within three months, and it must be recorded with the license, and for failure to return the certificate within that time the party may be fined not more than $100 nor less than $5. Any person empowered to solemnize marriage who does so contrary to law, may be fined not exceeding $500. And whoever undertakes to join others in marriage, knowing he has no lawful right to do so, may be fined not more than $500 nor less than $50, to which may be added imprisonment not more than three months nor less than ten days. A clerk who issues a marriage license contrary to law shall forfeit any sum which the jury in their discretion shall deem right, and a docket fee of $20.

Marriage of Children.—The clerk of the Circuit Court shall not issue a license without the consent of the parent or guardian, if there be any, if the bride be within the age of eighteen or the groom within the age of twenty-one. But if the bride has resided one month in the county where the license is sought, and there is no parent or guardian resident within the State of Indiana, license may issue. An affidavit of the required facts by some disinterested person justifies the clerk in issuing the license.

Forbidden Marriages: Relatives; Miscegenation.—Persons declared capable of entering the married state must not be nearer of kin than second cousins. The punishment

for incest is imprisonment in State prison not less than two nor more than ten years, or in county jail not less than six nor more than twelve months. The penalty attaches where the intercourse is between step-father and step-daughter, step-mother and step-son, parents and children, brothers and sisters of the age of sixteen and upwards, where the parties had knowledge of the relationship.

No person having one eighth part or more of negro blood shall be permitted to marry any white woman of Indiana, nor shall any white man be permitted to marry any negro woman or any woman having one eighth part or more of negro blood. And for doing so knowingly may be punished by fine not more than $1,000 nor less than $100, and imprisoned not more than ten nor less than one year. Whoever knowingly counsels or in any manner assists in such marriage shall be fined not more than $1,000 nor less than $100. The marriage is void.

Bigamy.—Whoever being married marries again, the former husband or wife being alive, and the bonds of matrimony still undissolved, and no legal presumption of death having arisen, is guilty of bigamy, and on conviction shall be imprisoned in State prison not exceeding five nor less than two years, or fined not exceeding $1,000, and imprisoned in county jail not less than three nor more than six months.

The legal presumption of death above referred to arises where a husband or wife remains absent in parts unknown for the space of five years.

Divorce.—May be granted for : (1) adultery ; (2) impotence existing at time of marriage ; (3) abandonment for two years ; (4) cruel and inhuman treatment ; (5) habitual drunkenness ; (6) failure of husband to make reasonable provision for his family for two years ; (7) conviction of infamous crime. Two years' residence required, to be proved by two witnesses, who are freeholders and residents of Indiana. Prosecuting attorney must defend all divorce suits in case of default. Where divorce is obtained by publication, decree must forbid petitioner to marry again within two years.

IOWA.

All minors attain their majority by marriage. So, although the bride is but fourteen and the groom is but sixteen, as soon as the wedding is over they are of full age in the eye of the law, as if they had attained the ages of twenty-one and eighteen respectively. Children born out of wedlock become legitimate when the parents marry.

How to Marry.—Persons may marry themselves in any manner they see fit, so long as they make a mutual agreement to take each other to be husband and wife and live together as such. But though the marriage will be perfectly good, the parties, unless they are members of a particular denomination having a particular mode of marrying which has been followed, and all persons aiding in such marriage will be guilty of a misdemeanor unless they procure a marriage license from the clerk of the Circuit Court of the county where the wedding took place, and may be put in jail not more than a year, or fined not exceeding $500, or both fined and imprisoned. Persons authorized to solemnize marriage are a justice of the peace or mayor of the city or incorporated town where the wedding is celebrated; a judge of the Supreme, Circuit, or District Court of Iowa; an ordained or licensed officiating minister of the gospel. The parties must obtain a marriage license from the clerk of the Circuit Court of the county where the marriage is to be solemnized. No license shall be granted where the bride and groom are under the ages of fourteen and sixteen respectively; nor to minors without the consent of parent or guardian (see Marriage of Children); nor where the parties are in such condition that they could not make any other civil contract; and unless the clerk is himself acquainted with the facts, he must take the testimony of disinterested witnesses. He must enter the application in a book for that purpose, stating that he is acquainted with the parties, and knew them to be of competent age and condition, or that the proof of such facts was made by one or more witnesses stating their age. For granting a license contrary to law he is guilty

of a misdemeanor punishable as above stated. The celebrant must give to each party, on request, a marriage certificate. He must also make return thereof to the clerk of the Circuit Court within ninety days, or forfeit $50. The clerk shall keep a register, containing the names of the parties, the date of marriage, and the name of the person by whom it was solemnized. Fee for solemnizing and making return, $2.

The law as to marriage licenses, however, does not apply to members of any particular denomination, having as such any peculiar mode of marriage. But where any mode is thus pursued which dispenses with the services of a clergyman or magistrate, the husband must make the return to the clerk of the Circuit Court within ninety days, and is liable for failure to do so as above stated.

Marriage of Children.—A marriage between a male of sixteen and a female of fourteen is valid, but if either has not attained such age, the marriage is a nullity or not, at the option of such party made known at any time before he or she is six months older than the age above fixed. If either party is a minor, however, the clerk of the Circuit Court is forbidden to grant a marriage license without the written consent of the parent or guardian, which consent must be acknowledged or proved, and filed with the clerk. Unless the clerk is acquainted with the age of the parties, he must take the testimony of competent and disinterested witnesses. For issuing a license contrary to law he is guilty of a misdemeanor.

Forbidden Marriages: Relatives.—If a man marry his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter; or if a woman marry her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son, or sister's son, they shall be deemed guilty of incest, and punished by imprisonment not more than ten years nor less than one year.

Bigamy.—If any person who has a former husband or wife living marry another, it is bigamy, unless the accused can show that his or her husband or wife has continually remained beyond seas, or has voluntarily withdrawn from the other and remained absent for the space of three years together, the accused not knowing the absent one to be living within that time, or that the accused has good reason to believe such husband or wife to be dead, or that the accused has been legally divorced. The punishment for bigamy is imprisonment in the penitentiary not more than five years, or fine not exceeding $500 and confinement in jail not more than one year. Any unmarried person who knowingly marries the husband or wife of another guilty of bigamy, may be punished by imprisonment in penitentiary not more than three years, or by fine not exceeding $300 and imprisonment in jail not exceeding one year.

A bigamous marriage is void, but if the parties live together after the death of the former husband or wife, the second marriage will be valid.

Divorce.—May be granted for : (1) adultery ; (2) wilful desertion without reasonable cause for two years ; (3) conviction of felony ; (4) habitual drunkenness contracted after marriage ; (5) inhuman treatment which endangers life. One year's residence required. Petitioner must swear that residence was not for purpose of divorce.

KANSAS.

Kansas is the only State where the law refers to marriage as a sacrament. It is declared that marriage shall be considered in law as a civil contract, to which the assent of the parties is essential ; "and the marriage ceremony may be regarded either as a civil ceremony or a religious sacrament ; but the marriage relation shall be entered into, maintained, and abrogated only by law." All marriages contracted out of the State, valid by laws where contracted, shall be valid in Kansas. (Compare with law as to criminal marriages.)

How to Marry.—There is doubt whether persons other than Quakers can marry themselves. License must be issued by the probate judge, who must require the applicant to take and subscribe an oath that no impediments in law exist ; and he may also in his discretion examine witnesses. For failure to examine applicant he may become liable to fine not exceeding $1,000. Marrying without a license subjects the parties to a fine not exceeding $1,000. Form of the license is prescribed by the statute. The ceremony may be performed by a judge, justice of the peace, or licensed preacher of the gospel. The celebrant must certify the marriage upon the license, and return it to the probate judge within thirty days. Solemnizing marriage with knowledge that any legal impediment exists thereto, or that either of the parties is within the age of consent, renders the celebrant liable to imprisonment not exceeding one year, or to fine not less than $500, or to both fine and imprisonment. Quakers or Friends are permitted to marry in accordance with the customs of their sect or society.

Marriage of Children.—The age of legal consent is twelve in females and fifteen in males. But where marriage is contracted by persons under the age of consent, it is nevertheless a good marriage until it has been dissolved or annulled by a court, and children born prior to such dissolution are legitimate. If the parties live together after the age of consent is reached, the court must refuse to dissolve the marriage on the ground of non-age. Solemnizing marriage with knowledge that either party is within the age of consent, renders celebrant liable to imprisonment not exceeding one year, or fine not less than $500, or both.

Forbidden Marriages: Relatives.—Marriage between parents and children, including grand-parents and grand-children of any degree ; between brothers and sisters, of the half as well as of the whole blood ; between uncles and nieces, aunts and nephews, and first cousins, including illegitimate as well as legitimate relatives, is void, and renders the parties liable to imprisonment not exceeding seven years. Whoever

knowingly licenses or solemnizes such a marriage becomes liable to be fined or imprisoned in the discretion of the jury. Where the jury render a verdict of guilty, or where the accused confesses the crime, the fine shall not exceed $1,000, nor be less than $100, and the imprisonment shall not be less than three months, nor exceed five years.

Bigamy.—Where a person having a husband or wife living shall marry, it shall constitute bigamy, unless the accused can show that the first marriage is no longer recognized in law, which may be done in one of four ways, by reason of (1) absence, (2) divorce, (3) non-age, or (4) imprisonment for life of one of the parties. The absence must have been for five successive years, the accused not knowing such absentee to be living during that time; or the absentee must have been continuously without the United States or Territories for five successive years. The divorce must be absolute, and the accused not prohibited thereby from marrying again, or it must appear that the time of such disability has expired; or it must appear that the first marriage was declared void, or adjudged to have been contracted when the parties were too young to lawfully consent thereto. Marriage within six months after divorce granted in Kansas is also bigamy. The punishment for bigamy is imprisonment not exceeding five years, nor less than six months, or fine not less than $500, or both. If both penalties are inflicted, the fine must not be less than $100, and the imprisonment not less than six months.

A single person marrying one who thereby commits bigamy, may be punished by imprisonment not exceeding five years, or in the county jail not exceeding six months, or by fine not exceeding $500, or both.

Marrying out of the State under circumstances which would constitute bigamy in Kansas, if the parties come to Kansas and live together, they are liable to indictment as if they had been married in Kansas.

Divorce.—May be granted for: (1) adultery; (2) where either party had former husband or wife living at time of

second marriage; (3) abandonment for one year; (4) impotency; (5) pregnancy of wife at time of marriage by person other than husband; (6) extreme cruelty; (7) fraudulent contract; (8) habitual drunkenness; (9) gross neglect of duty; (10) commission of felony, and imprisonment therefor in penitentiary. *Bona-fide* residence for one year required. Neither party shall marry for six months after decree of divorce. Such marriage constitutes bigamy.

KENTUCKY.

Every person who shall falsely and fraudulently represent or personate another, and in such assumed character shall marry another, shall be imprisoned not less than one nor more than five years. Unless a marriage is solemnized in the presence of an authorized person or society, it is void. But no marriage solemnized before any person professing to have such authority shall be invalid for want of such authority, if consummated by the parties, or one of them, in good faith. A person solemnizing marriage without authority or without a license shall be imprisoned not less than one nor more than twelve months, or fined not more than $1,000, or both; and for solemnizing marriage under pretense of authority shall be imprisoned not exceeding three years.

No minister or priest shall solemnize marriage until he has obtained a license therefor from the county court of the county where he resides, on satisfying the court that he is of good moral character, in regular communion with his society, and giving covenant or a bond to the Commonwealth of Kentucky, with good surety not to violate the marriage laws. The parties to the bond, for breach of it, may be fined not exceeding $2,000. Where the parties are not personally known to the county clerk, if under twenty-one, they must give bond with good surety for $100, conditioned that there is no lawful cause to obstruct the marriage.

Marriage is prohibited and declared void: (1) with an idiot or lunatic; (2) between a white person and a negro or mulatto;

(3) where there is a husband or wife living from whom the person marrying has not been divorced; (4) when not solemnized or contracted in presence of an authorized person or society; (5) when the male is under fourteen or the female under twelve.

If residents of Kentucky marry elsewhere the marriage is valid in Kentucky if valid where solemnized.

How to Marry.—No marriage shall be solemnized without a license, issued by the clerk of the county where the bride resides. If she is of full age or a widow, and applies personally or in writing, the license may be issued by the county clerk. Unless the clerk is personally acquainted with the applicants, if under twenty-one, he must, before issuing the license, take a bond from them as above stated. For issuing a license knowingly for any prohibited marriage, the fine is not less than $100 nor more than $500 and expulsion from office. For issuing it without performing the duties required, the fine shall not exceed $1,000. If issued by a deputy the same fine may be imposed, and in case of prohibited marriages he may also be imprisoned not more than a year, or both fined and imprisoned. In the absence of the clerk, or during a vacancy, the judge of the county court shall perform his duties.

Marriage shall be solemnized only by the following persons: ministers or priests of any denomination, licensed and giving bond as above stated; judges of the county court, and such justices of the peace as the county judge may authorize. But where either party belongs to a religious society, having no officiating priest or minister, whose usage is to solemnize marriage at the usual place of worship, and by consent given in the presence of the society, it may be so solemnized.

The license must be returned by the minister or clerk of the society to the clerk of the county court whence it issued within three months, with a certificate of the marriage over his signature, giving date, place of celebration, names of some two or more persons present, of whom there shall never be less

than two; for failure to do so the fine is $50. The same must be filed, registered, and indexed by the clerk. Such minister or clerk must also keep all details in a marriage register containing names, ages, residences, place of birth of persons married, and whether single or widowed, and deposit the register or a copy thereof with the county clerk on or before January 10th in each year. For failure to do so the fine is not more than $20 nor less than $5.

Marriage of Children.—The age of consent is fourteen in males and twelve in females. Where the bride, when married, was under fourteen and the groom under sixteen, and the marriage was without the consent of father, mother, guardian, or other person having proper charge of his or her person, and has not been ratified by the parties living together after that age, the court has power to declare it void, at the suit of any next friend.

If the bride is under sixteen and marries without consent of father, mother, or guardian, her estate may be put into the hands of a receiver, at the suit of a next friend, she to receive the income till she comes of age, and it shall then be delivered to her, unless the court considers it for her benefit to continue the receiver.

If either of the parties was under twenty-one, and were never before married, no license shall issue without consent of father or guardian, or if there be none, or he is absent from the State, without the mother's consent, given personally, or in writing, signed by two witnesses, and proved by oath of one of them administered by the clerk. One who falsely personates a father, mother, or guardian may be imprisoned not exceeding three years.

Forbidden Marriages: Relatives; Miscegenation.—A man shall not marry his mother, grandmother, sister, daughter, or granddaughter, nor the widow or divorced wife of his father, grandfather, son, or grandson; nor the daughter, granddaughter, mother, or grandmother of his wife; nor the daughter or granddaughter of his brother or sister; nor the

sister of his father or mother. A woman shall not marry persons related to her in like manner. If the relationship is founded on marriage, the prohibition shall continue notwithstanding its dissolution by death or divorce, unless the divorce is for a cause that rendered the marriage originally illegal and void. The prohibition includes illegitimate children and relatives. Such marriages are void, and punishable by fine not less than $500 nor more than $5,000. Incest as between father, mother, child, sister, or brother, with knowledge of the relationship, is felony, punishable by imprisonment not less than two nor more than six years.

Marriage between a white person and a negro or mulatto is prohibited and is void, and punishable by fine not less than $500 nor more than $5,000.

Bigamy.—Whoever being married shall marry another, is guilty of bigamy, unless the accused can show that the former husband or wife shall have been absent, and continually remained beyond seas, or in any State of the United States, not having been heard from for five years, the accused not knowing such person to be living ; or that the accused has been divorced and permitted to marry, or that the former marriage has been held void, or that the former marriage was had or made within the age of consent. The punishment is imprisonment not less than three nor more than nine years. If the person convicted is a man, the first wife gets a third of his lands for life, and a third of his other property absolutely ; and if a woman, she loses her dower.

Divorce.—May be granted for : (1) impotency or malformation ; (2) living apart entirely five consecutive years. To an innocent party, where the other is guilty of : (1) abandonment for one year ; (2) living in adultery ; (3) condemnation for felony : (4) concealment of loathsome disease existing at time of marriage, or contracting it afterwards ; (5) force, duress, or fraud in obtaining the marriage ; (6) uniting with religious sect whose creed requires renunciation of marriage covenant or forbids cohabitation. To wife, when husband is

guilty of: (1) drunkenness for one year, accompanied by wasting of his estate, and without making suitable maintenance; (2) habitually behaving for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to her, or to destroy permanently her peace and happiness; (3) such cruel beating or injury or attempted injury as indicates an outrageous temper, or probable danger to life, or great bodily injury. To husband, when wife is guilty of: (1) Pregnancy by another, without husband's knowledge at time of marriage; (2) adultery, or such lewd or lascivious behavior as proves her unchaste. No jury permitted. One year's residence required. The county attorney must resist every suit for divorce. In case of success his fee of $20 must be paid by the husband. After divorce either party may marry again.

LOUISIANA.

The laws of Louisiana are founded upon the civil law and upon the Code Napoleon. Marriage in Louisiana is declared to be "a contract intended in its origin to endure until the death of one of the contracting parties; yet this contract may be dissolved before the decease of either of the married persons, for causes determined by law." Since the law considers marriage in no other view than that of a civil contract, it sanctions all those marriages where the parties, at the time of making them, were: (1) willing to contract; (2) able to contract; (3) who did contract pursuant to the forms and solemnities prescribed by law. Consent is not free: (1) when given to a ravisher, unless given by the party ravished after she has been restored to the enjoyment of liberty; (2) when it is extorted by violence; (3) when there is a mistake respecting the person whom one of the parties intended to marry. Conjugal rights and duties are thus defined: The husband and wife owe to each other mutually, fidelity, support, and assistance. The wife is bound to live with her husband, and to follow him wherever he chooses to reside; the husband is obliged to re-

ceive her, and to furnish her with whatever is required for the convenience of life in proportion to his means and condition. Children born out of wedlock (except those who are born from an incestuous or adulterous connection) may be legitimated by the subsequent marriage of their father and mother, when legally acknowledged before marriage, by an act passed before a notary and two witnesses, or by their contract of marriage itself. They are then known as natural children.

How to Marry.—A license must first be procured, which, since 1882, in the parish of Orleans, shall be granted by the Board of Health and judges of the city courts in said parish, and in the other parishes of the State by the clerks of the courts, unless the clerk himself should be a party to the marriage, when the license shall be granted by the district judge. But a license can only be granted in the parish in which one at least of the parties resides. The proposed groom must first give a bond in a sum proportioned to his means, with condition that there exists no legal impediment to the marriage. The duration of the security is limited to two years. All licenses must be in duplicate. The marriage must be celebrated in presence of three witnesses of full age, and an act must be made of the celebration, signed by the celebrant, by the bride and groom, and by the witnesses ; and this act must be in duplicate and appended to the duplicate licenses, one of which must be returned within thirty days by the celebrant to the person who granted the license, who shall file and record the same in his office ; and all violations of the foregoing provisions shall be punished by a fine not exceeding $1,000. No marriage can be celebrated by procuration.

Marriage may be celebrated by any minister of the gospel, or priest of any religious sect, whether a citizen of the United States or not, and by parish judges and justices of the peace in their respective parishes, upon obtaining a special license directed to such minister, priest, or magistrate, issued by the person authorized to grant the licenses, authorizing him to celebrate such marriage, and not otherwise. Any priest or

minister residing in Louisiana may now celebrate marriage in any parish in the State. Regularly commissioned notaries, also, in the parish of West Feliciana, may, during their term of office, celebrate marriage within such parish, under the formalities required by law.

If opposition is made to a marriage it must be supported by oath of the party objecting, and if deemed sufficient to authorize a suspension, the marriage will be suspended, and a day fixed, not exceeding a period of ten days, for hearing the objections, and if overruled the party objecting must pay the costs.

Marriage of Children.—Persons authorized to celebrate marriage are forbidden to marry any male under the age of fourteen, or female under the age of twelve years ; and for doing so shall be removed from office, if a magistrate, or if a minister, deprived forever of the right of celebrating marriages. If the bride and groom above the ages above specified, have not attained the age of majority, they must have received the consent of the father and mother, or of the survivor of them ; and if both are dead, the consent of the tutor, and must furnish proof of this consent to the officer to whom application is made for permission to marry. If the age of majority has been attained, proof of this fact must also be furnished to such officer.

A marriage contracted by minors without such consent cannot for that cause be annulled, if it was otherwise contracted with the formalities prescribed by law, but shall be good cause for father or mother to disinherit their children if they think proper.

Forbidden Marriages: Relatives ; Miscegenation.—Marriage between persons related to each other in the direct ascending and descending line is prohibited, whether such relatives are legitimate or born out of marriage. Marriage among collateral relations is prohibited between brother and sister, whether of the whole or half blood, whether legitimate or illegitimate, and also between the uncle and the niece, the

aunt and the nephew. Whoever shall commit the crime of incest shall, on conviction, suffer imprisonment at hard labor for life.

The courts of Louisiana have declared that marriage between a white person and a negro or mulatto never can be valid in that State.

Bigamy.—Persons legally married are, until a dissolution of the marriage, incapable of contracting another, under the penalties established by law, which is by fine not exceeding $500 and imprisonment not exceeding two years, unless the accused can show that his or her husband or wife has been absent five years, the one not knowing the other to be living within that time ; or that the accused has been divorced ; or that his or her former marriage has been annulled by competent authority. The wife shall not be at liberty to contract another marriage until ten months after the dissolution of her preceding marriage.

Ten years' absence, without any news of the absentee, is sufficient cause to contract another marriage, after having been authorized to do so by the judge, on due proof that such absence, without any news, had continued the time required as aforesaid.

If the absent husband or wife happens to return after such second marriage, the second marriage will not thereby be invalidated, and such absentee so returning is free to marry again.

Divorce.—Absolute divorce in the first instance can be had only for : (1) adultery ; (2) condemnation to an infamous punishment. Judgment of separation from bed and board may be had for one of the following causes ; and after the expiration of one year, if no reconciliation has taken place, a divorce absolute may be granted : (1) habitual intemperance, excesses, cruel treatment, or outrages of such character as to render living together insupportable ; (2) public defamation ; (3) abandonment ; (4) attempt against life ; (5) fleeing from justice when charged with infamous offence, and proof of guilt.

MAINE.

Women, under the laws of Maine, may be appointed by the governor, with the advice and consent of council, to solemnize marriage. All marriages in the State prior to 1887 were required to be returned and filed with the Secretary of State at Augusta on or before the second Monday of May in each year, but this wholesome law was repealed in March, 1887. Persons must declare their intentions to marry, file and record the same with the town clerk of the town where each lives in a book known as "Record of intentions to marry," at least five days before a marriage certificate can be granted, and this book must be at all times open to inspection, and any person, believing parties about to wed have no lawful right to do so, may file with the same clerk a caution, and the reasons for it, and then no certificate shall issue until two justices of the peace have passed on the question after due notice to all parties. Whoever files the caution must bring the matter to a hearing within seven days. And if the caution is not for sufficient reasons, the person filing it must pay the costs. No insane person or idiot, or person having a husband or wife living, is capable of contracting marriage, and such marriages are absolutely void. Sentence to imprisonment for life and confinement under it dissolves marriage without legal process.

Whoever contracts a marriage, or makes false representations to procure a marriage certificate, or the solemnization of a marriage contrary to law, forfeits $100.

Residents of Maine, who go out of the State to evade the law as to marriage and divorce, with intent to return, and who marry out of the State and return, the marriage is void in Maine. And where residents marry out of the State, and return, they must, within seven days after, file a certificate or declaration of their marriage with the town clerk of the town where each lived, or forfeit $10.

How to Marry.—Persons intending to marry must first cause their intention to do so to be recorded with the town

clerk in the town in which each resides, and after the lapse of five days, if no caution has been filed with the clerk as above stated, the clerk shall deliver a certificate specifying when such intentions were entered with him, and it must be delivered to the minister or magistrate before he begins to solemnize the marriage. For issuing a false certificate of entry of intention to marry, knowingly, the clerk shall be fined $100 or imprisoned six months. No certificate of marriage shall be issued to a male under twenty-one or to a female under eighteen, without written consent of parents or guardians if there are any, nor to a town pauper. For issuing a certificate contrary to law or falsely stating residence of either party, the clerk forfeits $20. Marriage may be solemnized by a justice of the peace, or by an ordained minister or licensed preacher, or by any woman duly appointed and commissioned by the governor of Maine for that purpose, within the limits of his or her appointment. Whoever so commissioned wilfully joins persons in marriage contrary to law, forfeits $100, and the offender is forbidden to solemnize marriage thereafter. And if any person thus forbidden, or any minister or person not authorized joins any persons in marriage, he shall be imprisoned at hard labor not more than five years, or fined not exceeding $1,000. Persons solemnizing marriage must keep a record thereof, and make returns to the town clerk where the wedding was, and to the clerk of the town where the intention was filed, on or before the 15th of every month, for the preceding month, and must certify names, residences, and place of marriage, and for neglect to do so forfeits a sum not exceeding $50.

No marriage shall be void by reason of any omission or informality in entering the intention of marriage, or because solemnized before any known inhabitant of the State professing to be a justice of the peace or ordained minister, if the marriage is in other respects lawful and was entered into in good faith.

Quaker marriages are valid, but the clerk or keeper of the

records of the meeting where solemnized must deliver a list of all marriages once every year to the town clerk, or forfeit $50.

Marriage of Children.—The law of Maine seems to be silent as to age of consent in children or minors, but provides that the town clerk shall not issue a marriage certificate to a male under twenty-one or a female under eighteen, without the written consent of their parents or guardians, if they have any living in the State, and for issuing such certificate without such consent, he forfeits $20, and for marrying contrary to this provision of law, the persons so marrying or performing the ceremony each must forfeit $100.

Forbidden Marriages: Relatives.—No man shall marry his mother, grandmother, daughter, granddaughter, step-mother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister ; and no woman shall marry her corresponding relatives. Such marriages are void, and punishable by imprisonment not less than one nor more than ten years.

Bigamy.—If any person except one who has been legally and finally divorced, or one whose husband or wife has been continually absent for seven years, not known to the accused to be living within that time, having a husband or wife living, marries another married or single person ; or if any unmarried person knowingly marries the husband or wife of another such person, shall be deemed guilty of polygamy, and punished by imprisonment for not more than five years or by fine not exceeding $500.

Divorce.—All decrees of divorce are in the first instance decrees *nisi*, to become absolute after six months on application of either party, unless court otherwise orders. Parties may testify. Either may have a jury. Divorce may be decreed for : (1) adultery ; (2) impotence ; (3) extreme cruelty ; (4) utter desertion for three years ; (5) gross and confirmed habits of intoxication ; (6) cruel and inhuman

treatment. In favor of wife also, where husband being of sufficient ability, grossly or wantonly or cruelly refuses or neglects to provide suitable maintenance for her. It must appear that parties were married in Maine, or cohabited there after marriage, or that the plaintiff resided in Maine when cause for divorce arose, or had lived there in good faith one year. Residents of Maine, who go out of it to procure divorce for causes arising while parties lived in Maine, or for any cause not authorized by the laws of Maine, the divorce is void in Maine. In all other cases if the court granting the divorce had jurisdiction of both parties, it will be valid in Maine, if legally granted.

MARYLAND.

Maryland revised its laws relating to marriage in 1886. In case of Quaker marriages, the certificate must be signed by the bride and groom and at least twelve witnesses. Residents of Maryland, who go out of the State and marry a resident of Maryland without a license, or publication of the banns, shall on conviction be fined $100. The penalty for marrying certain relatives is fine or banishment from the State.

How to Marry.—It seems by the old law in force, prior to July, 1886, marriage could be celebrated in Maryland only by an ordained minister of the gospel, or in the manner practised by Quakers. This law seems to be still in force. No person can now be joined in marriage, except where the banns have been thrice published, or where the parties are Quakers, without a license issued by the clerk of the Circuit Court of the county where the wedding is celebrated. But in the city of Baltimore the license must be issued by the clerk of the Court of Common Pleas. The form of the license is prescribed by the statute.

It must have appended two certificates to correspond, as follows :

I hereby certify, that on this tenth day of June, one thousand eight hundred and , at Bay View, Cecil County, Walter May, and Jennie June,

were by me united in marriage, in accordance with the license issued by the Clerk of the Circuit Court of Cecil County [or City], Maryland,

Rev. PHILO SHEPPARD,
Rector of St. John's Episcopal Church,
Bay View, Maryland.

One of these certificates shall be handed to the bride and groom, and the other returned to the clerk of the court who issued it within thirty days. The license is full authority for proceeding with the marriage, and should the minister or other person proceed without it, he may be fined not less than $100 nor more than $500. The bride and groom marrying without a license, or publication of the banns, shall on conviction be fined $500.

The clerk must ascertain, on oath of the applicant, the full names of bride and groom, their residence, ages, color, whether married or single, whether related and in what degree, set out in a printed form to be signed by the applicant. The clerk must keep a "Marriage License Book" containing all these facts, also when the certificate of marriage was returned, and name of the minister or other person or persons by whom the ceremony was performed. If any legal impediment appears to exist, the clerk shall withhold the license until the court of which he is clerk orders him to issue it. Clerk's fee, $1.

The couple may marry without a license in case the names of the bride and groom shall be thrice published in some church or house of worship in the county where the bride lives three several Sundays, by some minister residing in the county.

In case of Quakers, the bride and groom must sign a certificate, with at least twelve witnesses, which must be recorded among the records of the Society within sixty days, or in some court of record in the county.

Persons not authorized by law, who shall solemnize marriage, shall on conviction be fined $500.

Marriage of Children.—No marriage license shall be issued unless the bride is over sixteen, and the groom over

twenty-one, unless the parents or guardian assent thereto in person, or by writing, signed by two witnesses, and the fact of the assent must be made part of the record. Any minister marrying persons under such ages, and not before married, without such consent, shall be fined on conviction $1,500.

Forbidden Marriages: Relatives; Miscegenation. —If any person in Maryland shall marry within any of the degrees of kindred or affinity expressed in the following table, the marriage shall be void.

A Man Shall Not Marry	A Woman Shall Not Marry
His grandmother.	Her grandfather.
His grandfather's wife.	Her grandmother's husband.
His wife's grandmother.	Her husband's grandfather.
His father's sister.	Her father's brother.
His mother's sister.	Her mother's brother.
His mother.	Her father.
His step-mother.	Her step-father.
His wife's mother.	Her husband's father.
His daughter.	Her son.
His wife's daughter.	Her husband's son.
His son's wife.	Her daughter's husband.
His sister.	Her brother.
His son's daughter.	Her son's son.
His daughter's daughter.	Her daughter's son.
His son's son's wife.	Her son's daughter's husband.
His daughter's son's wife.	Her daughter's daughter's husband.
His wife's son's daughter.	Her husband's son's son.
His wife's daughter's daughter	Her husband's daughter's son.
His brother's daughter.	Her brother's son.
His sister's daughter.	Her sister's son.

If any person shall marry with any person within the three degrees of direct lineal consanguinity, or within the first degree of collateral consanguinity, they shall on conviction pay $1,500, or be banished the State forever. If they marry within any other degree of kindred or affinity prohibited by the above table, they shall on conviction pay $500. A minister who marries parties thereby prohibited, shall on conviction pay a fine of $500.

All marriages between a white person and a negro, or

between a white person and a person of negro descent to the third generation inclusive, are forever prohibited and void, and persons so marrying are deemed guilty of an infamous crime, and on conviction shall be imprisoned not less than eighteen months nor more than ten years, and the minister marrying them shall be fined $100.

Bigamy.—Whoever, being married, shall marry another, is guilty of bigamy, unless the accused can show that his or her husband and wife has been seven years beyond seas, or has been continually absent seven years, the accused not knowing such person to be alive. On conviction the penalty is imprisonment for not less than eighteen months nor more than nine years. If the offender is the husband, the first wife gets her dower and one third of the personal property, and he forfeits all rights in the property of the first wife. If a woman, she forfeits all rights in her first husband's property.

Divorce.—Absolute divorce may be decreed for: (1) Impotency at time of marriage; (2) adultery; (3) any cause for which a marriage is void by laws of Maryland (as, for example, where there was no religious celebration; or of persons within prohibited degrees); (4) abandonment for at least three consecutive years, proven to be deliberate and final, and beyond reasonable expectation of reconciliation; (5) when woman was guilty of illicit intercourse before marriage, without knowledge of husband at time of marriage. Court may, in its discretion, forbid guilty party to marry during life of innocent party. Violation of decree is bigamy.

Limited divorce from bed and board may be had for: (1) cruelty; (2) exceedingly vicious conduct; (3) abandonment and desertion. Limited divorce may be perpetual, or for specified time, and may be revoked.

MASSACHUSETTS.

Marriages in Massachusetts must be solemnized in the city or town where the person solemnizing it resides, or where the bride and groom or one of them resides. Parties must file in-

tentions to marry. Marriages solemnized in a foreign country by a consul or diplomatic agent of the United States are declared valid in Massachusetts. If a marriage is solemnized before a person pretending or professing to be a justice or minister, or in the Society of Friends, such bogus representation or want of authority, or informality in entering the intention to marry, shall not render it void, if it is in other respects lawful, and the bride and groom or one of them acted in good faith.

A child born out of wedlock, whose parents shall subsequently marry, and whose father acknowledges such child, shall be deemed legitimate.

Prohibited marriages between relatives or in case of bigamy, or where either party is insane or an idiot, are void without decree or legal process.

How to Marry.—Except in case of Quakers, persons in Massachusetts cannot marry themselves, but they must be married by a justice of the peace or by an ordained minister of the gospel, residing in Massachusetts. The bride and groom must first enter their intention to marry in office of the clerk or registrar of the city or town in which they propose to wed ; and if there is no such clerk or registrar in the place where they reside, then the entry shall be made in the adjoining city or town. The clerk must give the parties a certificate, specifying the time when the notice of intention was entered, and with all the facts required by law to be ascertained, except the name of the minister or magistrate ; and this certificate must be given to the minister or magistrate before he proceeds with the ceremony. The clerk may require an applicant for such certificate to produce an affidavit sworn to before a justice, setting forth the age of the parties, which shall be sufficient proof ; and whoever wilfully makes a false statement as to age, residence, parent, master, or guardian, shall forfeit not exceeding $200. Every justice, minister, or clerk, or keeper of records of marriages among Quakers, shall make a record of each marriage, and all facts required to be re-

corded, and shall, between the first and tenth of each month, return a copy thereof for the preceding month to the clerk or registrar of the town where the parties were wed ; or if neither resided there, then to the clerk or registrar of the town where the bride and groom severally resided, if they resided in different places, and such return shall be recorded by the clerk ; and for failure to do so, the minister, justice, or clerk shall forfeit not less than $20, nor more than $100. And where residents marry out of the State and return, they must, within seven days thereafter, file a declaration of their marriage, including all facts required by law, with the clerk or registrar of the city or town where either of them lived at the time ; and for neglect to do so shall forfeit $10.

A justice or minister joining persons in marriage, knowing it is not duly authorized, shall forfeit not less than $50, nor more than $100. And whoever joins persons in marriage, knowing he has no legal right to do so, shall be imprisoned not exceeding six months, or pay a fine not less than $50 nor more than $200.

Marriage of Children.—If a clerk or registrar issue a certificate to a male under twenty-one or a female under eighteen, when he has reasonable ground to suppose them to be under such ages, except on the application and consent in writing of the parent or guardian, he shall forfeit not exceeding $100 ; but if there is no parent, master, or guardian in Massachusetts competent to act, a certificate may be issued without application or consent. No minister or magistrate shall solemnize a marriage where he has reasonable cause to suppose the groom is under twenty-one or the bride is under eighteen, without the consent of the parent or guardian having custody of the minor, if there is any competent to act. A marriage where bride and groom were under the age of consent is void, if the parties separate, and do not live together after such age is reached.

Whoever fraudulently and deceitfully entices a girl under sixteen to leave her home and marry him, clandestinely with-

out the consent of the young lady's parent or guardian, and whoever aids and assists such clandestine marriage, shall be punished by imprisonment not exceeding one year or by fine not exceeding $1,000, or by both fine and imprisonment.

Forbidden Marriages: Relatives.—No man shall marry his mother, grandmother, daughter, granddaughter, step-mother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, or mother's sister. No woman shall marry her father, grandfather, son, grandson, step-father, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, or mother's brother. Such marriages are void without legal process; and where the relationship exists by marriage the prohibition continues, notwithstanding the dissolution, death, or divorce of the marriage, unless the divorce was for the reason that the marriage was originally unlawful. The punishment for such marriages is imprisonment in the penitentiary not exceeding twenty years or in jail not exceeding three years.

Bigamy.—Whoever, having a husband or wife living, shall marry another, is guilty of polygamy, unless the accused can show that the husband or wife of the accused continually remained beyond sea, or has voluntarily withdrawn and remained absent seven years together, the accused not knowing such absent one to be living within that time; or that the accused has been legally divorced, and was not the guilty cause of such divorce; or that more than two years have elapsed since the entry of final decree of divorce. The punishment for polygamy is imprisonment in State prison not exceeding five years, or in jail not exceeding three years, or by fine not exceeding $500.

Divorce.—All decrees of divorce are in the first instance decrees *nisi*, and may become absolute after the expiration of six months from granting of the decree on application to the

court by either party. Divorce may be decreed for: (1) adultery; (2) impotency; (3) extreme cruelty; (4) utter desertion for three consecutive years; (5) gross and confirmed habits of intoxication; (6) cruel and abusive treatment; (7) gross or wanton and cruel refusal or neglect of husband to maintain wife, if of sufficient ability to do so; (8) separating without consent from the other, and uniting for three years with any religious society which holds the relation of husband and wife to be unlawful, and refusing to cohabit; (9) sentence to prison for five years or more at labor; (10) absence for such time as to raise presumption of death. The innocent party may marry at once, but the guilty party shall not marry until the expiration of two years after entry of final decree.

The complainant must have been an inhabitant of Massachusetts for three years before filing the libel, and the parties must have been inhabitants of the State at the time of their marriage; or the complainant must have resided five years in Massachusetts immediately prior to filing the libel; or the parties must have lived as husband and wife in Massachusetts; if the cause of divorce occurred elsewhere, they must have lived in Massachusetts prior thereto as husband and wife; and one of them must have lived there when the cause of divorce occurred.

A divorce obtained by an inhabitant of Massachusetts in another State or country, where the party left the State to procure it, if the cause occurred in Massachusetts, or for a cause not sufficient to secure a divorce there, is void in that State.

MICHIGAN.

In Michigan, while the law prohibits the doing of certain things on Sunday, it is careful to declare that a man may become engaged or may celebrate his wedding on that day. Where either husband or wife is sentenced to imprisonment for life, the sentence dissolves the marriage, without further proceedings or decree, and a subsequent pardon will not restore it.

If any person shall take any woman unlawfully, and against her will, by force, menace, or duress, compel her to marry him, or any other person, or to be defiled, he shall be punished by imprisonment for life, or any term of years. If a person does so with intent to accomplish such a design, the imprisonment shall not exceed ten years. And every person who shall entice a girl under sixteen from her parents or guardian, without their consent, in order to marry her, shall be imprisoned in penitentiary not exceeding three years, or in jail not exceeding one year, or fined not exceeding $1,000.

Children born out of wedlock become legitimate by the subsequent marriage of their parents, or if they do not marry, the father can make the child "legitimate in law," by so acknowledging in writing, executed like a deed of land. A record and index of all marriages in the State must be kept by the Secretary of State at Lansing.

How to Marry.—The statute is silent as to whether persons can marry themselves, but there have been decisions by the Michigan courts that parties may marry themselves by present contract and living together. Marriage may be solemnized by a justice of the peace in his county; or throughout the State by an ordained minister, acting as pastor, or who continues to preach the gospel in the State. All justices and ministers before solemnizing marriage are required to examine at least one of the parties on oath, which they are authorized to administer, as to the legality of the intended marriage, and if they join persons in marriage contrary to law, they shall forfeit not exceeding $500. And if they undertake to join persons in marriage knowing they have no right to do so, or knowing of any impediment to the marriage, they shall be imprisoned not more than a year, or fined not less than $50 or more than $500, or both fined and imprisoned. But no marriage celebrated by a pretended or supposed minister or justice shall be void, where the bride and groom, or one of them, acted in good faith.

No particular form is necessary, but the bride and groom

shall solemnly declare, in the presence of the minister or magistrate and at least two witnesses, that they take each other as husband and wife.

Marriages among Quakers, however, or any other particular denomination, celebrated according to the customs of the denomination, are declared valid.

Every justice, minister, or clerk of religious society, by whom or at which a wedding is celebrated, must make a record thereof, containing full names and residences of all parties and of at least two witnesses present, and maiden name of bride, if a widow, age, color, together with place of birth of bride and groom, official station of person performing the ceremony, and deliver a certificate thereof, on demand, to either party ; and must also within ninety days deliver a certified copy of such certificate to the county clerk of the county where the wedding took place, and pay him twenty-five cents for recording same ; and the clerk must record same in a book for that purpose fully indexed, and make return to the Secretary of State of all marriages in September of each year, for the year ending December 31st preceding. And any officer failing to do so, or making false returns, shall be guilty of a misdemeanor, and fined not exceeding $100, and imprisoned till same is paid, or not exceeding ninety days.

Marriage of Children.—If the groom is eighteen and the bride sixteen, they are competent to wed. The punishment for enticing a girl under sixteen away from her parents or guardians without their consent, in order to marry her, is punishable by fine and imprisonment as above stated.

Forbidden Marriages: Relatives. — No man shall marry his mother, grandmother, daughter, granddaughter, step-mother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, nor his sister, brother's daughter, sister's daughter, father's sister, or mother's sister. And no woman shall marry her corresponding relatives. Such marriages are void,

and punishable by imprisonment in State prison not more than fifteen years, or in jail not more than one year.

Marriages between white persons, and those wholly or in part of African descent, are declared valid.

Bigamy.—If any person having a former husband or wife living shall marry another, they shall be deemed guilty of polygamy, unless the accused can show that his or her husband or wife has continually remained beyond sea, or voluntarily remained absent five years together, the accused not knowing such person to be living ; or that the accused had good reason to believe such husband or wife to be dead, or that the accused has been lawfully divorced. The penalty is imprisonment in State prison not exceeding five years, or in jail not exceeding one year, or a fine not exceeding $500.

Divorce.—May be granted for : (1) adultery ; (2) physical incapacity at time of marriage ; (3) sentence to imprisonment for three years or more ; (4) desertion for two years ; (5) where either has become an habitual drunkard ; (6) where husband or wife of a resident of Michigan has obtained a divorce out of the State. Divorce from bed and board may be decreed for : (1) extreme cruelty, whether by personal violence or other means ; (2) utter desertion for two years ; to wife also where husband being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to support her. One year's residence is required, except where parties were married in Michigan, and complainant resided there till filing of bill.

MINNESOTA.

According to the law of Minnesota, marriage is declared to be a civil contract, to which the consent of the parties capable in law of contracting is essential. Children born out of wedlock become legitimate by the subsequent marriage of their parents. If a marriage shall be annulled by the court, the issue of the marriage are nevertheless legitimate.

If a marriage is celebrated before any person pretending or professing to be authorized to perform the ceremony, such

bogus representation shall not make the marriage void, so long as the bride and groom, or one of them, acted in good faith. There must be at least two witnesses to every marriage, besides the minister or officer.

How to Marry.—Marriage may be solemnized by any justice of the peace in his county, or by any judge of a court of record, the superintendent of the department of the deaf and dumb in the Minnesota Deaf, Dumb, and Blind Institute, or ordained minister of the gospel anywhere in the State. But a minister before he can perform the marriage ceremony, shall first file with the clerk of the district court of some county, a copy of his credentials of ordination. The clerk must record the credentials and give a certificate thereof. The minister must endorse upon every certificate of marriage given by him, the place where his credentials are recorded.

A license must be procured, only in case the bride lives or is married in a county where there is a clerk of a district court. The clerk when applied to may inquire on oath respecting the legality of the marriage, and if satisfied there is no legal impediment thereto, shall grant the license under the seal of the court, and make a record of it. For issuing it contrary to law he shall forfeit not exceeding $1,000. The celebrant may also examine at least one of the parties on oath, which he is authorized to administer, as to the legality of said marriage, and in case he is satisfied there is any legal impediment thereto, must not perform the ceremony. No particular form is necessary, but the parties shall declare in the presence of the celebrant and attending witness that they take each other as husband and wife. In every case there must be at least two witnesses present besides the celebrant. A certificate must be given if requested, specifying names of bride and groom and of at least two witnesses, with residences, and time and place of marriage. Celebrant must also record it, and within one month make return to the clerk of the district court of the county where the marriage took place, or to the county to which it is attached for judicial purposes, which certificate

shall be filed and recorded by the clerk in a book kept for that purpose. For failure to make the return or to record it, celebrant may be fined not exceeding $100. For solemnizing marriage contrary to law, or making false return of pretended marriage, the party shall forfeit not exceeding $500, or may be imprisoned not exceeding one year. And if a person who is not authorized knowingly undertakes to join others in marriage, he may be imprisoned not more than one year, or fined not more than $500, or both fined and imprisoned. Quaker marriages solemnized according to their customs are valid ; but the clerk of the meeting at which it was solemnized must, within a month, make a return to the clerk of the court as in other cases. And if the marriage does not take place in meeting, the marriage certificate must be signed by the parties and at least six witnesses, and filed and recorded as in other cases under like penalty.

Marriage of Children.—A male of eighteen and a female of fifteen may marry, but if they are not of full age, and are not either a widow or widower, the clerk shall not issue a license without the consent given personally of the parents or guardian, or in writing signed by two witnesses, one of whom shall appear before the clerk and make oath as to its genuineness. The clerk is authorized to administer the oath to such witness, and shall issue the license under the seal of the court. Clerk's fees $2. For issuing a license contrary to law he shall forfeit not exceeding $1,000 to aggrieved parent or guardian. If parties married under the age of legal consent live together after arriving at such age, the marriage will not be annulled by the court.

Forbidden Marriages: Relatives.—No marriage in Minnesota shall be contracted by persons who are nearer of kin than first cousins, computing by the rules of the civil law, whether of the half or whole blood. Such marriages are void without decree, and the punishment prescribed is imprisonment not more than two years nor less than six months.

Bigamy.—If any person having a former husband or wife

living marries another, the accused is guilty of bigamy, unless it can be shown that the husband or wife of the accused continually remained beyond sea, or has voluntarily withdrawn and remained absent seven years together, the accused not knowing such absent one to be living within that time ; or that the accused has been legally divorced, and was not the guilty cause of the divorce. The penalty is imprisonment not more than four nor less than two years, or fine not exceeding $500 nor less than $300. If the absentee returns, the second marriage is void only from the time it is so declared by the court.

Divorce.—May be granted for : (1) adultery ; (2) impotency ; (3) cruel and inhuman treatment ; (4) sentence to imprisonment in State prison ; (5) wilful desertion for three years ; (6) habitual drunkenness for one year. One year's residence required, except where cause is adultery, which was committed while plaintiff was resident of Minnesota. Divorce from bed and board may be granted for : (1) cruel and inhuman treatment ; (2) such conduct by husband as renders it unsafe and improper for wife to live with him ; (3) abandonment of wife by husband. Parties may testify, but their evidence must be corroborated.

MISSISSIPPI.

The statutes of Mississippi, on the subject of matrimony though not elaborate, are clear and concise, save on the question as to whether parties except Quakers can legally marry themselves. The groom must on applying for a license give bond to the State in the penalty of $100. Members of the board of supervisors in their respective counties are among those authorized to celebrate marriage.

How to Marry.—Persons authorized to solemnize marriage between persons producing a license are any ordained minister of the gospel in good standing, any chancellor, or judge of the Supreme or Circuit Court, or any justice of the peace or member of the board of supervisors within their respective counties. A pastor of any religious society may marry mem-

bers, according to its established rules and customs. Quakers, Mennonites, or any other Christian society may solemnize their marriages in the manner agreeable to their regulations. If any minister, judge, or justice shall join any persons in marriage without a lawful license, or shall go out of the State to do it, he may be imprisoned not less than one nor more than six months.

The marriage license shall be granted by the clerk of the Circuit Court of the county in which the bride usually resides, but the clerk must take a bond to the State with sufficient surety in the penal sum of $100, conditioned that there is no lawful cause to obstruct the marriage. A certificate of marriage, signed by the minister or magistrate celebrating the same, or by the clerk of the religious society where performed, must be sent to the clerk of the Circuit Court of the county where the wedding took place, within six months, to be recorded, and for failure to do so the party forfeits $50. Clerks of religious societies and pastors must keep true and faithful registers of all marriages solemnized, and send a certificate therefrom to such Circuit Court clerk.

Marriage of Children.—If the groom is under twenty-one or the bride under eighteen, the consent of the parent or guardian of such person shall be personally given to the clerk, or due proof made to him, by oath, of at least one credible witness, which oath the clerk may administer, that the parent or guardian did sign the consent there produced; and the clerk must record the consent personally given or the certificate so proved, and issue and record the license, which must be directed to any minister, judge, or justice, lawfully authorized to celebrate the rites of matrimony. For failure to comply with these provisions the clerk is guilty of a misdemeanor. If he takes an affidavit showing the parties have reached the above ages, he is protected in issuing a license without such consents.

Forbidden Marriages: Relatives; Miscegenation.—The son shall not marry his mother, or step-mother; the

brother his sister; the father his daughter, or his daughter's daughter; the son shall not marry the daughter of his father begotten of his step-mother, or his aunt being his father's or mother's sister; the father shall not marry his son's widow. A man shall not marry his wife's daughter, or his wife's daughter's daughter, or his wife's son's daughter, or the daughter of his brother, or his sister; and the like prohibition shall extend to females in the same degrees. And such marriages are void, and the parties shall be fined $500, or imprisoned not longer than ten years, or both fined and imprisoned.

The marriage of a white person and a negro, or mulatto, or person who shall have one fourth or more of negro blood, shall be void, and subject the parties to the same punishment above stated; and an attempt to evade the law by marrying out of the State and returning shall be punishable in the same manner.

Bigamy.—Every person having a husband or wife living, who shall marry again, and every unmarried person who shall marry the husband or wife of another, shall be guilty of bigamy, unless the accused can show that such husband or wife has been absent five successive years without being known to the accused to be living, or has remained without the United States continually for five successive years, or that the former marriage has been annulled or lawfully dissolved for any cause save the adultery of the accused. The punishment is imprisonment in the penitentiary not longer than ten years.

Divorce.—May be granted: (1) when parties are within prohibited degrees of relationship; (2) natural impotency; (3) adultery; (4) sentence to imprisonment in penitentiary, if not pardoned prior to incarceration; (5) desertion for two years; (6) habitual drunkenness; (7) mental incapacity at time of marriage; (8) habitual cruel and inhuman treatment, marked by personal violence; (9) bigamy. One year's residence required.

MISSOURI.

Missouri statutes declare marriage to be a civil contract to which the consent of the parties capable in law of contracting is essential. Prior to 1881 a marriage license was not required, but the duty of ascertaining whether the parties had a legal right to marry devolved on the person performing the ceremony. Since March, 1881, a license is required in every case, and persons solemnizing marriage of parties who failed to obtain it are guilty of a misdemeanor, and are subject to a fine not exceeding $500, and in addition become liable, in case of minors, to a civil action at the suit of the parent, guardian, or other person to whom the minors' services are due, in damages not exceeding $500.

How to Marry.—Persons may marry themselves without the performance of any ceremony ; or they may be married by any judge, judge of a county court, and justice of the peace, or by any licensed or ordained preacher of the gospel. A marriage license shall be issued by the recorder of the county, or of the city of St. Louis ; the form is prescribed by the statute.

The celebrant shall, within ninety days after the issuing the license, make upon it, as near as may be, the following return, and return it to the officer issuing it :

STATE OF MISSOURI, }
COUNTY OF SHELBY. } *ss.*

This is to certify that the undersigned, a justice of the peace, did, at Shelbyville, in said county, on the 10th day of May, A.D. 18—, unite in marriage the above-named persons.

LEONARD LINNETT, Justice of the Peace.

The recorder shall record all marriage licenses in a book kept for that purpose, with the return thereon, for which his fee is $1, to be paid by the person obtaining the same. He must make a return to the grand jury of all licenses issued and not returned within the time allowed as above. Neglect or refusal to issue a license on payment of the fee or to record

the return is a misdemeanor, and the penalty is a fine not less than $100 nor more than $500. Failure to return a license within ninety days, or making a false return, is a misdemeanor, with same penalty.

Every religious society may solemnize the rites of matrimony according to the custom of said society or denomination. The certificate or return of such marriage must be made out by the clerk, or keeper of the minutes or records of such society.

Persons solemnizing marriage, having no legal right, but falsely representing that they have a legal right to do so, who shall thereby deceive any innocent person, by a pretended ceremony, into the belief that they are legally married, shall be imprisoned not exceeding one year, or fined not less than $500, or be both fined and imprisoned.

Marriage of Children.—The age of consent seems to be fifteen in males and twelve in females (see Bigamy), but no person shall join in marriage or issue a license authorizing the marriage of any male under the age of twenty-one, or any female under the age of eighteen, except with the consent of his or her father, or—if he is dead, incapable, or not residing with his family—of his or her mother or guardian, as the case may be, if he or she have one ; which consent, if not given at the time in person, must be by a certificate in writing, subscribed and witnessed. In every license the recorder shall state whether the applicants, or either, or both of them are of age, or are minors, and if either is a minor the name of the father, mother, or guardian consenting. For marrying a minor without such consent the celebrant shall forfeit $300, to be recovered in a civil action, and shall also be subject to indictment, and imprisonment not exceeding six months nor less than one month.

Forbidden Marriages: Relatives; Miscegenation.—All marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as of the whole blood, and be-

tween uncles and nieces, aunts and nephews, are prohibited and declared absolutely void, whether the children or relatives are legitimate or illegitimate. The punishment prescribed for such marriages is imprisonment not exceeding seven years.

All marriages between white persons and negroes are prohibited and declared absolutely void. If a person having one eighth part or more of negro blood shall marry a white person, or if a white person marry a person having one eighth or more negro blood, the punishment is imprisonment in penitentiary for two years, or fine not less than $100, or imprisonment in jail not less than three months, or both fine and imprisonment. The jury may determine the proportion of negro blood by the appearance of the person.

Persons solemnizing any forbidden marriage are guilty of a misdemeanor.

Bigamy.—Every person having a husband or wife living who shall marry another, whether married or single, is guilty of bigamy, unless the accused can show: (1) that the former husband or wife has been seven years absent without being known to the accused to be living; (2) or that such absent one has been continually remaining without the United States and Territories seven years together; (3) or that there has been a divorce, and the accused is not thereby forbidden to marry; (4) or that the first marriage has been adjudged void by the court; (5) or that at the time of the first marriage the bride was under twelve and the groom under fifteen; (6) or that former husband or wife has been sentenced to imprisonment in the penitentiary for life. The punishment for bigamy is imprisonment in penitentiary not exceeding five years or in county jail not less than six months, or by fine not less than $100 and imprisonment in jail not less than three months. An unmarried person who marries one who thereby commits bigamy is liable to the same punishment. Persons outside of Missouri marrying contrary to the law against bigamy and coming into the State, are punishable as if the second marriage had taken place in Missouri.

Divorce.—May be granted for : (1) impotence ; (2) adultery ; (3) one year's absence without reasonable cause ; (4) conviction of felony or infamous crime after marriage ; (5) habitual drunkenness for one year ; (6) cruel or barbarous treatment endangering life ; (7) offering indignities rendering condition intolerable ; (8) conviction of felony or infamous crime before marriage unknown to other party at time of marriage ; (9) pregnancy of wife at time of marriage without husband's knowledge. No jury. One year's residence required.

MONTANA.

By Act of Congress approved on the 22d of February, 1889, Montana was admitted into the Federal Union. The constitution for this new commonwealth is now being perfected. The law of the Territory, which, it is fair to presume, will be the law of the State, is as follows :

Montana seems to be the only place in the United States where children are forbidden to enter into marriage ; but the law there says that the bride and groom shall be of the age of majority. Every person who shall take any woman unlawfully against her will, and by force, threats, menace, or duress compel her to marry him, or to marry any other person, or to be defiled, shall be imprisoned not less than two nor more than fourteen years. Every person who shall falsely represent or personate another, and in such assumed character shall marry another, shall be imprisoned not less than one nor exceeding two years, or fined not exceeding five thousand dollars. Marriage is declared a civil contract to which the assent of the parties capable in law of contracting is essential, and the parties shall be of the age of majority. Children born out of wedlock become legitimate by the subsequent marriage of their parents.

How to Marry.—The marriage may be solemnized by the governor of Montana, by any judge of a court of record, by any justice of the peace in his county or judicial district, or by a settled minister of the gospel. Whoever undertakes to

join others in marriage, knowing he has no legal right to do so, or knowing of any legal impediment to the proposed marriage, is liable to a fine not exceeding $500, and imprisonment until it is paid. But no marriage shall be void which is solemnized before a person pretending or professing to be a judge or minister, if the bride and groom, or one of them, acted in good faith. Every person solemnizing marriage shall make a record thereof, and deliver to either or both parties, if requested, and also within three months to the recorder of deeds of the county where the wedding took place, a certificate in the form prescribed by the statute.

The certificate must be filed and recorded by the recorder, in a book kept for that purpose. His recording fee is one dollar, which must be paid by the bride and groom before the marriage. For failing to do so the person so failing shall forfeit not less than $20 nor more than $50. [It must be recorded also pursuant to the Act of Congress in the Probate Court. See note foot of page 194.] And for wilfully making a false certificate the penalty is a fine not exceeding $500, and imprisonment until it is paid.

Marriage of Children.—Marriage is declared to be a contract to which the parties shall be of the age of majority. In most of the States and Territories children over fourteen and sixteen are allowed to marry, with consent of parents or guardians, and are capable of marrying even without such consent. The language of the law in Montana, however, would seem to imply that until young people have reached their majority, they cannot lawfully marry.

Forbidden Marriages: Relatives.—No marriage in Montana shall be contracted between parties who are nearer of kin than second cousins, computing by the rules of civil law, whether by the half or whole blood. The punishment is imprisonment not less than one nor exceeding ten years.

Bigamy.—Consists in having two wives or two husbands at the same time, knowing that the former husband or wife is still alive. The crime is excused if the accused can show that

his or her husband or wife has been continually absent for five years together, the accused not knowing such absent one to be living within that time ; or that the accused has been lawfully divorced or the first marriage legally rendered void. The punishment is fine not exceeding $1,000, and imprisonment not less than one nor more than five years. And if any unmarried person knowingly marries the husband or wife of another the penalty is fine not less than $1,000, or imprisonment not less than one nor more than two years.

Divorce.—May be decreed for following grounds : (1) Natural impotency at time of marriage ; (2) that another husband or wife is living ; (3) adultery ; (4) desertion for one year without cause ; (5) where husband has wilfully left Montana without intending to return ; (6) habitual drunkenness for one year ; (7) extreme cruelty ; (8) conviction of felony or other infamous crime, the parties not having lived together thereafter. One year's residence required, unless offence was committed in Montana while parties resided there.

NEBRASKA.

Marriage is declared to be a civil contract, to which the consent of the parties capable of contracting is essential. Marriages contracted out of Nebraska, valid where celebrated, shall be valid in Nebraska. Children born out of wedlock become legitimate if the parents afterwards marry, and have been adopted in the family with other children born in wedlock, or shall have been acknowledged by the father in writing, signed in the presence of one witness.

How to Marry.—Every judge and justice of the peace, preacher of the gospel, authorized to perform marriage by the usage of his church, may solemnize marriage. No particular form shall be required, except that the bride and groom shall declare in the presence of the minister or magistrate, and at least two witnesses, that they take each other as husband and wife. A license must first be obtained from the probate judge of the county where the wedding takes place. The judge must state

therein the full names of the bride and groom, and of the parents of both, and the maiden name of the mothers of each, and the residence, birthplace, age, and color of the couple to be married, and must record the license in a suitable book before it is issued. If the testimony taken by the judge discloses that either bride or groom is incompetent, or that there is any legal impediment, he shall refuse the license. The minister or magistrate shall enter on the license a full return of the proceedings, and return it to the probate judge within three months, and the return shall be recorded with the license. Upon request, he shall give to each of the parties a certificate thereof. For failure to make or record the return, or for joining persons in marriage without authority, or for making a false return, the punishment is by fine not exceeding $500, or imprisonment not exceeding one year.

A marriage celebrated by one professing or pretending to be a minister or magistrate shall not be void for that reason, so long as the bride and groom, or one of them, acted in good faith.

Every religious society may join members in marriage according to the customs of the society, but the clerk or keeper of the records must make a return to the probate judge, and the same shall be recorded as in other cases.

Marriage of Children.—The bride must be sixteen, and the groom eighteen. But no license shall be granted to a minor, without the verbal or written consent of the father, if living, or if not, of the mother, or of the guardian; and the written consent must be proved by at least one competent witness. If the parties are under the ages above stated, and marry, and separate before arriving at such ages, the marriage is nevertheless valid, unless annulled by the court.

Forbidden Marriages: Relatives; Miscegenation.—When the parties are related, as parents and children, grandparents and grandchildren, brothers and sisters of the half or of the whole blood, uncle and niece, aunt and nephew, whether the relatives are legitimate or illegitimate, the marriage is void,

and the parties shall be punished by imprisonment not exceeding ten years. And where either party is insane, or an idiot, the marriage is absolutely void.

Where one party is white and the other is possessed of one fourth or more negro blood, the marriage is absolutely void.

Bigamy.—Where a person who is married shall marry another, the party offending is guilty of bigamy, unless the accused can show that his or her husband or wife has been continually and wilfully absent for five years and unheard from. The punishment is imprisonment not more than seven, nor less than one year. If the first marriage shall have been dissolved by divorce, it will be bigamy if either party shall marry while an appeal is pending from the judgment of divorce, or within six months after the judgment, the time allowed by law within which to bring such appeal.

Divorce.—May be decreed for: (1) adultery; (2) wilful abandonment without just cause for two years; (3) where party has become an habitual drunkard; was physically incompetent at time of marriage; has been sentenced to imprisonment for three years or more, or has been guilty of extreme cruelty. Wife may also have a divorce where husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to suitably maintain her. Six months' residence is required. Proceedings to reverse or modify divorce shall not be taken until six months after entry of decree. Until such proceedings are taken, or while an appeal is pending, neither party shall marry again; and such marriage shall be bigamy, punishable as above stated.

NEVADA.

Every person who shall take any woman unlawfully, against her will, and by force, menace, or duress compel her to marry him or to marry any other person or to be defiled, on conviction shall be imprisoned not less than two nor more than fourteen years, and the record of such conviction shall operate as a divorce.

Every person who shall falsely represent or personate another, and in such assumed character shall marry another, shall, upon conviction, be punished by imprisonment not less than one nor more than two years, or by fine not exceeding $5,000.

Marriages prohibited on account of consanguinity or bigamy, solemnized in Nevada, are void without decree of divorce or legal proceedings. When a marriage is supposed to be void, or its validity disputed by reason of want of age or understanding, or for fraud, either party may file a bill in the Probate Court to have the same annulled. Illegitimate children become legitimate by the subsequent marriage of their parents.

How to Marry.—Marriage may be solemnized by any ordained minister, who has obtained a license from the district court of any county or district in the State of Nevada, or by any judge of a district court in his district, or justice of the peace in his county. In order that a minister may procure a license he must produce to the district court credentials of his being a regularly ordained minister of any religious society or congregation, and will then be entitled to a license to solemnize marriages. He must also produce his license to the county clerk in every county in which he shall solemnize any marriage, and the clerk must enter his name upon the record as authorized to do so. Parties desiring to marry must procure a license from the county clerk of the county where one of them resides, or, if both are non-residents, then from the clerk of any county. If the groom is under twenty-one, or the bride is under eighteen, the consent of the parent or guardian must first be obtained (see Marriage of Children). Clerk's fee for license, $1 ; and if he issues a license contrary to law he shall forfeit a sum not exceeding $1,000.

It is a misdemeanor for a minister or other officer to join persons in marriage until the parties exhibit their marriage license, punishable by fine not exceeding $500, or imprisonment not exceeding six months, or both. And if such officer attempts to join persons in marriage knowing of any legal

impediment thereto, the fine shall not exceed $500, and imprisonment until the same is paid.

In the solemnization of marriage no particular form shall be required, except that the parties shall declare in the presence of the judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife ; and in every case there shall be at least two witnesses present beside the person performing the ceremony. When a marriage shall have been solemnized the celebrant shall give to each party, if required, a certificate thereof, specifying the names and residences of the parties and of at least two witnesses, and the time and place of the marriage. He shall also make a record thereof, and within three months deliver to the recorder of deeds of the county where the wedding took place a certificate in the following form :

STATE OF NEVADA, }
COUNTY OF } *ss.*

This is to certify that the undersigned, a Justice of the Peace of said county [or other officer, as the case may be], did, on the 10th day of June, 18 , join in lawful wedlock, Percy I. Pain and Atossa Ake, with their mutual consent, in presence of Herbert Wise and Henry Joy, witnesses.

JEROME JOY,
Justice of the Peace.

The certificate must be filed by the recorder in a book, and he shall receive a fee, $1, from celebrant, which he must receive from the couple before the marriage. For neglect to file such certificate, the fine is not less than $20 nor more than $50. For making a false certificate, the fine is a sum not exceeding $500 or imprisonment not exceeding one year, or both.

Any person undertaking to perform marriage, knowing he has no right to do so, or knowing of any legal impediment, is liable to a fine not exceeding $500, and imprisonment until the fine is paid.

No marriage solemnized before any person professing to be

a judge, justice, or minister shall be void, provided it be consummated with a full belief on the part of the persons, or either of them, that they have been lawfully wedded.

Marriages of "Friends," or "Quakers," in the forms in use among them are valid.

Marriage of Children.—Male persons of the age of eighteen and female persons of the age of sixteen may marry, but if the male is under twenty-one, or the female under eighteen, the consent of their fathers respectively, or, in case of his death or incapacity, then of their mothers or guardians, must first be obtained. The county clerk, before granting the license, if either party under such age has not been previously married, must receive personally such consent, or a certificate under the hand of such parent or guardian, attested by two witnesses, one of whom shall appear before said clerk and make oath that he saw the parent or guardian subscribe the certificate, or heard him or her acknowledge the same; whereupon the clerk is authorized to issue and sign the license, affixing thereto the seal of the county. If in any other manner he shall issue or sign any marriage license, he shall forfeit and pay a sum not exceeding $1,000. In no case shall a marriage be adjudged a nullity on the ground that one of the parties was under age of legal consent, if, after attaining such age, they freely cohabited together as husband and wife. Children of such marriages shall not be deemed illegitimate.

Forbidden Marriages: Relatives; Miscegenation.—Persons marrying must not be nearer of kin than second cousins. All marriages prohibited by law on account of consanguinity are absolutely void, without decree, and punishable by imprisonment not less than one nor more than ten years.

If any white man or woman intermarry with any black person, mulatto, Indian, or Chinese, they are guilty of a misdemeanor punishable by imprisonment not less than one nor more than two years. And persons solemnizing such marriages are guilty of a misdemeanor punishable by imprisonment not less than one nor more than three years.

Bigamy.—If any person marry while a former husband or wife is alive, it constitutes bigamy, unless the accused can show that his or her husband or wife has been continually absent for five years, the accused not knowing such absent husband or wife to be living, or that the prior marriage has been dissolved or annulled. The punishment is a fine not exceeding $1,000, or imprisonment not less than one nor more than five years. If the second marriage was out of Nevada, cohabitation in Nevada thereafter is bigamy.

If an unmarried person knowingly marry the husband or wife of another, the penalty is by fine not less than $1,000, or imprisonment not less than one nor more than two years.

Divorce.—May be decreed for: (1) impotency existing at time of marriage; (2) adultery; (3) wilful desertion for one year; (4) conviction for felony or infamous crime; (5) habitual gross drunkenness of either party, contracted since marriage, which shall incapacitate such party from contributing his or her share to support of family; (6) extreme cruelty of either party; (7) husband's neglect for one year to provide common necessaries, when not the result of poverty which he could not avoid by ordinary industry. Six months' residence required.

NEW HAMPSHIRE.

A man who has never gone through the formalities of wedlock may nevertheless become a married man if he lives with a female for the period of three years and until one of the parties dies, provided the couple were generally reputed to be husband and wife. This rule applies also in Arizona during the life time of the parties. (See page 194.) The same rule applies to the woman. Children born out of wedlock, where the parents afterwards marry and recognize them, shall inherit, as if they were legitimate. All marriages must be recorded annually, alphabetically in the office of the secretary of the State Board of Health at Concord.

How to Marry.—Parties desiring to marry must first file notice of intention to do so with the clerk of the town where the bride and groom dwell, to be recorded. If there is no clerk in the town where they live, then it must be entered in the adjoining town. The notice must contain the full names, color, occupation, birthplace, residence, and ages of the bride and groom, and whether they are single or widowed ; also whether first, second, or other marriage ; and also full names, residences, color, occupation, and birthplace of parents of both. Fee for filing, $1. A certificate of such intention embodying these facts must be delivered by the clerk to the parties, specifying when notice of intention was filed ; and it must be delivered to the person solemnizing the marriage before he proceeds. Clerk's fee, $1. And parties going out of the State to marry, and returning, must file a declaration of such marriage with the clerk of the town where either lived before the marriage, within seven days after such return, under penalty of $10.

Marriage may be solemnized by any justice of the peace in his county, or by any minister of the gospel in the State in good standing, or by any minister out of the State commissioned by the governor, or by a minister out of the State, but having a pastoral charge wholly or partly in New Hampshire.

The secretary of the State Board of Health is made the registrar of vital statistics, and must furnish persons authorized to celebrate marriage with printed blanks to be filled out, which must state the date and place of marriage, the name, residence, and official character of the person who solemnized it, and also all the facts embraced in the notice of intention to marry. The celebrant must make a record of the marriage, and fill out accurately the printed blanks furnished him, and return it within six days to the town clerk where the intention was recorded. The clerk must keep a chronological record of all marriages, and in January of each year transmit a copy of the record to the secretary of the State Board of Health, or registrar, for the year ending December 31st preceding, and

the names of all persons failing to make returns. The registrar must arrange and record these returns in his office alphabetically. Failure to perform any of these duties subjects the party to a fine not exceeding $100. Quakers may marry in accordance with the custom usually practised among them. The marriage fee is $1. Persons not authorized to do so, who shall join persons in marriage, with or without a certificate, shall be fined not exceeding $300. But no marriage solemnized before any person professing or pretending to be a justice or minister, shall be void, for that reason or for any omission or informality, provided the bride and groom, or one of them, acted in good faith. For joining persons in marriage without a certificate, the celebrant shall forfeit $60 for each offence.

Marriage of Children.—The statutes are silent upon the question of marriage of children, except to declare that the age of consent shall be twelve years as to the bride, and fourteen years as to the groom.

Forbidden Marriages: Relatives.—No man shall marry his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter, father's brother's daughter, mother's brother's daughter, father's sister's daughter, or mother's sister's daughter. No woman shall marry her corresponding relatives.

All such marriages are void, without decree, and the issue illegitimate ; and the parties shall be imprisoned not exceeding one year and fined not exceeding $500, or imprisoned not exceeding three years.

Bigamy.—If any person having a husband or wife alive shall marry another, such person shall be guilty of bigamy, unless the accused can show that his or her husband or wife has been absent and not heard of for the space of three years together, or shall be reported and generally believed to be dead, or that the accused has been legally divorced, or that the first marriage took place when the bride was under twelve

years old or the groom was under fourteen. The punishment for bigamy is the same as in cases of marrying relatives.

Divorce.—No divorce will be granted for any cause save adultery, unless the cause is in existence at time of filing the petition. It may be granted to innocent party for : (1) impotency ; (2) adultery ; (3) extreme cruelty ; (4) conviction of crime punishable with more than one year's imprisonment and actual imprisonment thereunder ; (5) treatment seriously injuring health ; (6) treatment endangering reason ; (7) three years' absence without being heard from ; (8) habitual drunkenness for three years ; (9) joining religious sect holding marriage unlawful, and refusal for six months to cohabit ; (10) husband's wilful absence for three years, making no provision for wife ; (11) wife's wilful absence for three years without his consent ; (12) wife's residence out of State ten years, without his consent and without claiming marital rights ; (13) to wife of citizen or alien who has lived three years in New Hampshire whose husband having left United States to become citizen of another country, has not come into the State and claimed marital rights or made provision for wife during that time. Actual residence for one year required.

NEW JERSEY.

New Jersey statutes prescribe no particular form for celebrating the marriage ceremony. The laws are silent on many questions, and recourse must be had to the decisions of the courts on various points.

If any person shall unlawfully take any maid, widow, or wife, contrary to her will, and shall marry her, or cause her to be married to another, either with or without her consent, or defile her, or cause her to be defiled, may, together with his aiders and abettors, be fined not exceeding $1,000, or imprisoned not exceeding twelve months at labor, or both, and every such marriage shall be void. For punishment in case of children, see Marriage of Children.

How to Marry.—Every judge of any Court of Common Pleas, and justice of the peace, recorder, and police justice, and

mayor of a city of this State, and every stated and ordained minister of the gospel, is authorized to solemnize marriages between such persons as may lawfully enter into the matrimonial relation, and every religious society in New Jersey may join together in marriage such persons as are of such society, or when one of such persons is of such society, according to the rules and customs of the society to which they or either of them belong.

The respective clerks of the Court of Common Pleas in and for the several counties of the State shall register and record all returns of marriages, in a book kept for that purpose, within one calendar month after receiving the same, and every person authorized to solemnize marriages, and the clerk or keeper of the minutes of every religious society, before which any marriage shall be solemnized, must keep a register of every marriage, and shall transmit to such clerk a certificate thereof, within thirty days, which shall show the name, age, parentage, birthplace, occupation, and residence, of the parties married, the time and date of the marriage, the condition of each of the parties, whether single or widowed, the name of the clergyman or magistrate officiating, and the names and residences of the witnesses, and for neglecting to do so, the party is liable to a penalty of $10. The clerk is entitled to a fee of twelve cents for making the record, to be paid by the bride and groom, and for failure to record the return within the time, shall forfeit $100, and costs, to be paid to any person suing for it. Making a false return by any person is a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court.

The Secretary of State must also furnish suitable books to the clerks of the several townships in the State, in which the town clerk must keep a register of the marriages (and births and deaths) reported to him by the assessor of the township. The Secretary of State must make a report thereof annually to the Legislature.

Marriage of Children.—No person having, or pretending to have, authority to join persons in marriage, shall marry any male under the age of twenty-one, or female under the age of eighteen, unless the parent or parents, guardian or guardians, or person or persons under whose care or government the

minors shall be, be present and consent, or give a certificate in writing, proved to be genuine by the oath or affirmation of at least one person of full age and discretion, who was present at the signing and affixed his name as a witness, which certificate must be produced at the marriage, and the celebrant may take such oath, and enter it upon the back of such certificate.

If the celebrant is not satisfied with the declarations of the bride and groom that they are of lawful age, he may administer an oath or affirmation that they are of lawful age, of which he shall make a certificate and file it with the record, which certificate shall be his justification should the parties deceive him. For marrying any minor contrary to the above provisions the celebrant shall, for every offence, forfeit $300 at the suit of the parent or guardian, one half to go to the plaintiff and the other half to the State Treasurer.

If any person shall unlawfully convey or take away any woman child, unmarried, whether legitimate or illegitimate, being within the age of fifteen years, out of or from the possession, custody, or governance, and against the will, of the father, mother, or guardian of such woman child, though with her own consent, with an intent to seduce, deflower, or contract matrimony with her, he is guilty of a high misdemeanor if he marries or deflowers her, and may be fined not exceeding $1,000, and imprisoned at labor not exceeding five years, or either, and every such marriage shall be void.

Forbidden Marriages: Relatives.—

No Man Shall Marry	
His grandmother.	His daughter's son's wife.
His grandfather's wife.	His mother.
His wife's grandmother.	His step-mother.
His father's sister.	His wife's mother.
His mother's sister.	His daughter.
His son's wife.	His wife's daughter.
His sister.	His wife's son's daughter.
His son's daughter.	His wife's daughter's daughter.
His daughter's daughter.	His brother's daughter.
His son's son's wife.	His sister's daughter.

No woman shall marry her corresponding relatives.

All persons who shall intermarry within these prohibited degrees, shall, on conviction, be punished by fine not exceeding $500, or imprisonment at labor not exceeding eighteen months, or both, in the discretion of the court. But if the relationship of the parties is that of parent and child, the punishment is a fine not exceeding $1,000, or imprisonment at labor not exceeding fifteen years, or both.

Bigamy.—If any person being married shall marry another, it is bigamy, unless the accused can show that his or her husband or wife shall have continually remained without the United States five years, or shall have absented himself or herself for five years within the State or within the United States, the one not knowing the other to be living within that time; or that the accused has been divorced by a court of competent authority, having cognizance thereof; or that his or her prior marriage has been declared null and void by such courts; or that such former marriage was had or made or to be had or made by such parties within the age of consent. The penalty for bigamy is by fine not exceeding $1,000 and imprisonment at labor not exceeding ten years, or either, in the discretion of the court.

Divorce.—May be granted where either party had husband or wife living at time of marriage. Such marriage is void. Also (1) where parties are within prohibited degrees; (2) adultery; (3) wilful, continued, and obstinate desertion for three years. Complainant must be resident at time of injury. Otherwise, or where adultery was committed out of New Jersey, three years' residence required. Divorce from "bed and board" granted for extreme cruelty in either party.

NEW MEXICO.

New Mexico, which contains a large Mexican and mongrel Spanish population, defines the marital duties and obligations as follows: "The husband is the head of the family; he, nevertheless, owes fidelity, favor, support, and protection to

the wife ; he should make her a participant in all the conveniences he enjoys ; he should show her the utmost and every attention in cases of sickness, misfortune, or accident, and provide for her the necessaries of life according to his condition and ability ; and the wife owes fidelity and obedience to the husband ; she is obliged to live with him, and accompany him to such place as he may deem proper and advantageous to make his residence." For failure to perform these duties, the injured party may go before a justice of the peace, who shall forthwith dispatch his compulsory writ, compelling defendant to immediately appear. He must then reconcile the parties, if he can, and has power to imprison the offender.

Marriage is declared to be a civil contract, to which assent of parties capable of contracting is essential. It is declared that all marriages celebrated elsewhere, if valid where contracted, shall be valid in New Mexico.

Persons who live together without being married may be compelled to marry, by a justice of the peace, if there be no impediment thereto ; and for refusal, or if there is a lawful impediment to the marriage, they shall be fined not less than $25 nor more than $80, every time they are found living together.

Any person who by force, menace, or duress, compels a woman against her will to marry him, or to marry any other person, is punishable by imprisonment not less than three nor more than ten years, or by fine not less than $1,000, or by both. If the female is under fourteen, the crime is abduction. (See Marriage of Children.)

Slandering married people, or interfering with their private affairs in such manner that disagreement may result between husband and wife, is punishable by fine as in case of concubinage. Children legitimatized by a subsequent marriage are as direct heirs as legitimate children, with the exception of the right of primogeniture.

How to Marry.—Those who may desire may solemnize the contract of matrimony by means of any ordained clergy-

man, without regard to the sect to which he may belong, or by means of any civil magistrate. It shall also be lawful for any religious society to celebrate marriage conformably with the rites and customs thereof. Whoever solemnizes marriage must, before doing so, ascertain from the bride and groom that they are not incapable of contracting; that they are free, and in no way bound by any species of marriage contract with any other person, and are unmarried; and evidence on these points must be given by well known and credible persons. The celebrant must also keep a register of all marriages, and must on the first days of January and July in each year, or at every regular term of the Probate Court of each county, transmit to the clerk of the Probate Court of each county where the wedding took place a certificate containing the full names of all persons united in marriage before him, with the date of such marriage; and for failure to do so shall be fined not less than $20 nor more than $50. And the secretary of every religious society, or person presiding over the same, must do likewise; and for neglect to do so shall incur a like penalty. The clerk of each Probate Court must record all reports of marriages made to him in a book to be kept for that purpose; and for failure to do so shall be fined not less than $50 nor more than $100. [They must be recorded also pursuant to the Act of Congress in Probate Court. See note foot of page 194.] For making a false return or false record of any marriage, or for celebrating marriage contrary to law, the punishment is fine not less than $100, or imprisonment at labor not less than three months, or both fine and imprisonment.

Marriage of Children.—If the groom is under twenty-one, or the bride is under eighteen, they are respectively forbidden to marry without the consent of the parent, guardian, or person under whose charge the party may be; and the person to give such consent must be present, or consent in writing duly authenticated. All marriages between parties under those ages are invalid; and in case of such marriages, the guilty parties, and the person performing the ceremony, shall

be fined not less than $50. But a marriage of persons under age is not void until it is so declared by a decree of the court, after suit brought to annul it; and such a suit cannot be brought by either party after he or she has passed the age when such person is forbidden to marry without consent. If the bride brings the suit before she arrives at the age of eighteen, the court may award her alimony, until she becomes of age, or remarries. The children of such marriages are legitimate. If minors live together until the age of consent is passed, the marriage becomes valid.

Any person who takes a female under the age of fourteen years, without the consent of her father, mother, guardian, or other person having legal charge of her person, for the purpose of marriage, or takes or detains a female unlawfully against her will, with intent to compel her by force, menace, or duress, to marry him, or to marry any other person, is guilty of abduction, and punishable by imprisonment not more than five years, or by fine not less $1,000, or by both.

Forbidden Marriages: Relatives.—All marriages between relatives and children, including grandfathers and grandchildren of all degrees; between half-brothers and sisters, as also brothers and sisters of full blood; between uncles and nieces, aunts and nephews, are absolutely void, whether the children referred to are illegitimate or legitimate. Persons celebrating such marriages shall be fined not less than $50; and the guilty bride and groom may be fined likewise, or imprisoned not more than one year.

Bigamy.—Every person who shall be convicted of bigamy or polygamy shall be imprisoned not more than seven nor less than two years. The defences to the charge are found in the decisions of the courts declared from time to time.

Divorce.—May be granted for: (1) adultery; (2) cruel or inhuman treatment; (3) abandonment; (4) habitual drunkenness on the part of either; or (5) neglect on part of husband to support wife. Six months' residence required. Proof must be strict, and must be sustained by at least one witness besides complainant.

NEW YORK.

A person who by force, menace, or duress compels a woman against her will to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment for not less than three nor more than ten years, or by a fine of not more than $1,000, or by both. A person who takes a female under the age of sixteen years, without the consent of her father, mother, guardian, or other person having legal charge of her person, for the purpose of marriage, or for immoral purposes ; or takes or detains a woman unlawfully against her will, with the intent to compel her by force, menace, or duress to marry him, or to marry any other person, or to be defiled, is guilty of abduction, and punishable by imprisonment for not more than five years, or by fine not more than $1,000, or by both. Females' testimony in such cases must be supported by other evidence.

When either of the parties shall be incapable for want of age or understanding of consenting to a marriage, or shall be incapable from physical causes of entering into the marriage state, or when the consent of either party shall have been obtained by force or fraud, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.

How to Marry.—Marriage, so far as its validity in law is concerned, is a civil contract, to which consent of parties capable in law of contracting shall be essential. The parties may contract marriage themselves, without the aid or presence of a minister, magistrate, or witnesses, by words of the present. But for the purpose of being registered and authenticated according to law, marriage shall be solemnized only by the following persons : Ministers of the gospel or of legally incorporated religious congregations, and priests of every denomination ; mayors, recorders, and aldermen of cities ; judges of the county courts, and justices of the peace, and judges and justices of courts of record. These provisions, however, do not apply to Quakers, who may solemnize marriage in the manner and agreeably to the regulations of their societies ; or shall the parties to any marriage, or any minister or

magistrate be required to solemnize marriage in the manner prescribed.

If the parties are not personally known to the celebrant, he shall ascertain from them respectively their right to contract marriage, and may examine them, or either of them under oath, which he is authorized to administer, and the examination shall be reduced to writing, and subscribed by the parties. Making a false statement under oath is perjury. A celebrant who solemnizes marriage, where either of the parties within his knowledge shall be under the age of legal consent, or an idiot or lunatic, or to which, within his knowledge, any legal impediment exists, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by fine of not more than $500, or by both, in the discretion of the court.

The celebrant shall on request furnish to either party a certificate signed by him, specifying the names and residences of parties, and that they were known to the celebrant, or were satisfactorily proved by the oath of the parties, or of a person known to the celebrant, to be the persons described in the certificate, and were of sufficient age to contract marriage, the name and residence of witness, or witnesses, and time and place of marriage. It must also state that after due inquiry made there appeared no lawful impediment to the marriage.

The clerk of the city or town where the marriage was celebrated, or where either party resides, shall file it if presented within six months, and enter same in a book.

In the city of New York the celebrant must keep a marriage register, containing name and surname of parties, their age, and whether single or widowed, and furnish a written copy of same to the Board of Health within ten days, and is liable to a fine of $10 for failure to do so. In Buffalo, Albany, Yonkers, and Brooklyn, and in incorporated villages, the celebrant or groom at every marriage must make return to the Board of Health within thirty days, and failure to do so, or failure of the board to register the same or forward certificate thereof to State Bureau of Vital Statistics is a misdemeanor.

Marriage of Children.—The age of legal consent for contracting marriage, since February 21, 1887, is eighteen years in the case of males and sixteen years in the case of females. Taking a female under sixteen, without consent of parents or guardian, for the purpose of marriage, constitutes abduction ; and a celebrant who knowingly marries a person under the age of legal consent is guilty of a misdemeanor, punishable as above stated. From 1830 to 1887, the age of legal consent was twelve years in females and fourteen in males.

Forbidden Marriages: Relatives.—Marriages between parents and children, including grandparents and grandchildren of every degree, ascending and descending, and between brothers and sisters of the half as well as of the whole blood, are declared to be incestuous and absolutely void ; and the guilty parties and each of them are punishable by imprisonment for not more than ten years.

Bigamy.—A person who, having a husband or wife living, marries another, is guilty of bigamy, unless it can be shown : (1) that the former husband or wife has been absent five years successively, without being known to the accused within that time to be living, and believed by the accused to be dead ; or (2) that the former marriage has been pronounced void, annulled, or dissolved by the judgment of a court of competent jurisdiction, for a cause other than the adultery of the accused ; or (3) that the accused, if divorced for his or her adultery, has received from the court which pronounced the divorce permission to marry again ; or (4) that the former husband or wife has been sentenced to imprisonment for life. Bigamy is punishable by imprisonment for not more than five years. A person, unmarried, who knowingly marries another, if such other person thereby is guilty of bigamy, is punishable by imprisonment for not more than five years, or by a fine of not more than $1,000, or both.

Divorce.—Absolute divorce may be granted for adultery. When one of the parties has been convicted of crime and sentenced to imprisonment for life, it will not constitute bigamy

for the other party to remarry. Divorce from bed and board, or a separation, may be granted for: (1) cruel and inhuman treatment, or such conduct as may render it unsafe or improper for the plaintiff to cohabit with defendant; (2) abandonment; or (3), where wife is plaintiff, the neglect or refusal of defendant to provide for her. Parties must have been married in New York, or plaintiff must have resided there when offense was committed and when suit is commenced.

Guilty party shall not marry again until after death of innocent party, unless such innocent party has remarried, and five years have elapsed since divorce was granted, and conduct of guilty party has since that time been uniformly good, when court in which decree was granted may modify it by allowing guilty party to remarry. Marriage of guilty party in New York without having disability removed is void. But the plaintiff and defendant may remarry.

NORTH CAROLINA.

Children born out of wedlock can only become legitimate upon the petition of the father, which must be presented to the Superior Court of the county where he resides, and if it appear that such petitioner is the father of the child, the court may make a decree to that effect, which shall be recorded by the clerk, and such child may then inherit from his father only.

How to Marry.—Marriage must be celebrated in the presence of an ordained minister of any religious denomination, or of a justice of the peace and of at least three witnesses. The bride and groom must consent presently to take each other as husband and wife, freely, seriously, and plainly expressed by each in the presence of the other, and the consequent declaration must be made by such minister or officer, that such persons are man and wife. But marriages among Friends, according to a form or custom peculiar to themselves, shall not be interfered with. No such minister or officer, however, shall perform the ceremony, or declare the bride

and groom to be man and wife, until there shall be delivered to him a marriage license signed by the register of deeds of the county where the wedding is to take place, or his lawful deputy.

The register of deeds, upon application, shall issue to persons over eighteen years of age (or by parent's or guardian's consent where the parties are younger—see Marriage of Children) a marriage license, provided it shall appear to him probable that there is no legal impediment to such marriage. The form of the license is prescribed by the statute.

If it shall appear that it is probable that there is any legal impediment to the marriage, the register has power to administer an oath to the applicant touching the legal capacity of the parties to contract a marriage.

Every register who shall knowingly or without reasonable inquiry issue a marriage license where there is any lawful impediment, or, where either party is under eighteen, without consent of parents or guardians, shall forfeit and pay $200. And every minister or officer who shall marry any couple without a license, or after the license shall have expired, or shall fail to return such license to the register within two months after the marriage, with the certificate duly filled up and signed, shall forfeit and pay $200, and is guilty of a misdemeanor.

The register must enter the particulars of every marriage alphabetically, in a book kept for that purpose, and file the original license ; and for failure to do so shall forfeit and pay $200.

Marriage of Children.—All unmarried male persons of sixteen or upwards, and all unmarried females of fourteen or upwards, may lawfully marry, but in case such persons are under the age of eighteen, and shall reside with father or mother, uncle or aunt, or brother or elder sister, or shall reside at school, or be an orphan and reside with a guardian, the register shall not issue a license for such marriage until the consent in writing of the relation with whom such infant

resides, or of the person by whom such infant was placed at school, and under whose custody and control he or she is, shall be delivered to him, which written consent must be filed and preserved by the register.

All marriages between a male under sixteen and any female, or between a female under fourteen and any male, shall be void. But if there be issue of such a marriage it shall not be declared void after the death of either the father or mother. Any person marrying a female under fourteen is guilty of a misdemeanor. Obtaining a license for persons under lawful age by misrepresentation or false pretences, shall be a misdemeanor punishable by fine not exceeding $50, or imprisonment not exceeding thirty days, or both.

Forbidden Marriages: Relatives; Miscegenation.—All marriages between any two persons nearer of kin than first cousins shall be void, whether the kinship be of the half or of the whole blood, but if there be issue of such a marriage it shall not be declared void after the death of either the father or mother. The punishment when such relatives live together as husband and wife shall be imprisonment not exceeding five years, in the discretion of the court.

All marriages between a white person and a negro or Indian, or between a white person and a person of negro or Indian descent to the third generation inclusive, shall be void, but the law now confines the Indians referred to to the Croatan tribe. Persons so marrying are guilty of an infamous crime, and may be imprisoned not less than four months nor more than ten years, and may also be fined at the discretion of the court. Issuing a license to such persons, or performing the marriage ceremony, constitutes a misdemeanor.

Bigamy.—If any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall take place in North Carolina or elsewhere, and those aiding or abetting such marriage, is guilty of felony, unless the accused can show that his or her husband or wife shall have been continually absent for seven

years together, and shall not have been known to the accused to have been living within that time, or that he or she has been lawfully divorced from the bond of the first marriage, or whose first marriage shall have been declared void. The second marriage is void ; and the punishment for bigamy is imprisonment not less than four months nor more than ten years.

Divorce.—Absolute divorce may be granted for : (1) impotency at time of marriage continuing at time of suit ; (2) if either party shall separate from the other and live in adultery ; (3) if wife shall commit adultery ; (4) if wife be pregnant at time of marriage without knowledge of husband, and if he be not the father of the child with which she is pregnant. Divorce from bed and board may be granted for : (1) abandonment by either party ; (2) if either shall maliciously turn the other out of doors ; (3) shall by cruel and barbarous treatment endanger the life of the other ; (4) shall offer such indignities to the person as to render his or her condition intolerable and life burdensome ; (5) if either shall become an habitual drunkard. Two years' residence required.

NORTH DAKOTA.

Admitted into the Union by Act of Congress approved the 22d of February, 1889. Now formulating its State constitution. For laws see DAKOTA.

OHIO.

Whoever entices or persuades a married person to join any sect or denomination, the principles and practices of which inculcate a renunciation of the matrimonial contract, shall be fined not more than $500. But parties are not forbidden to deliver a public sermon, exhortation, or address on the subject. And if the husband joins such sect the wife may have proceedings to secure her share of the husband's property.

Children born out of wedlock become legitimate by the subsequent marriage of parents, and acknowledgment by father.

How to Marry.—Previous to the marriage, notice thereof shall be published (in the presence of the congregation) on two different days of public worship, the first publication to be at least ten days previous to such marriage, within the county where the bride resides, or a marriage license must be obtained from the probate judge in such county, unless it is the probate judge himself who is about to wed, and he must get his license from the Court of Common Pleas. The probate judge may examine the parties under oath to ascertain if there be any legal impediment to the marriage, and if he is satisfied there is none, he shall grant, sign, and affix the seal of the court to the license. His fee is seventy-five cents. Ministers of the gospel must produce to the probate judge credentials, showing such person to be regularly ordained. He shall then be entitled to a license authorizing him to solemnize marriages in Ohio. He must produce this license to the probate judge of every county in which he officiates, and the judge shall thereupon record his name as a minister duly authorized to solemnize marriages, and note the county from which the license issues. No fee shall be charged therefor. Marriage may be celebrated by any ordained minister of any religious society or congregation in the State of Ohio, licensed as aforesaid, or by any justice of the peace in his county, or the several religious societies, agreeably to the rites and regulations of their respective churches.

A certificate of every marriage, signed by the justice or minister, whether authorized by publication of banns or by license, shall be transmitted to the probate judge where the license was issued, within three months, and recorded, and for failure to transmit or record, the fine is $50. In Cincinnati returns must be made as often as required by the Board of Health. For joining persons in marriage contrary to law, the fine shall not exceed $1,000. Persons not legally authorized, who shall attempt to officiate, shall, upon conviction, forfeit $500.

Marriage of Children.—Males of eighteen and females of sixteen may marry. If the groom is under twenty-one and

the bride under eighteen, and neither is a widow or widower, the probate judge, before issuing a license, must have the personal consent of the parent or guardian, or the consent in writing, signed by two witnesses, one of whom must swear before the judge that he saw such parent or guardian subscribe it, or acknowledge it, and the judge shall administer the oath to such witness for that purpose, and shall then sign the license, and affix to it the seal of the county. For issuing the license contrary to law he shall forfeit $50. And if such persons are married without a license, then every justice or minister who performs the service must ascertain that the intention of marriage between them has been duly published, and also that the consent of such parent or guardian has been obtained, either by acknowledgment in presence of the minister or justice, or by certificate under their signature, signed by one or more witnesses, who must be present to satisfy the celebrant that the certificate was actually signed by such parent or guardian. Solemnizing marriage contrary to law subjects the celebrant to a fine not exceeding $1,000.

Forbidden Marriages: Relatives; Miscegenation.—Persons capable of marrying must not be nearer of kin than second cousins. Punishment for persons living together as husband and wife, who are nearer of kin by consanguinity or affinity than cousins, having knowledge of their relationship, is imprisonment not more than ten years, nor less than one year.

A person of pure white blood who intermarries with any negro, or person having a distinct and visible admixture of African blood, and any negro or person having a distinct and visible admixture of African blood who intermarries with any person of pure white blood, shall be fined not more than $100, or imprisoned not more than three months, or both. And the same punishment follows for knowingly issuing a license for such marriage or solemnizing it.

Bigamy.—Whoever, having a husband or wife, marries another, is guilty of bigamy, unless the accused can show that his or her husband or wife has been continually absent for five

successive years next before such marriage, without being known to the accused to be living within that time. The punishment is imprisonment not more than seven years nor less than one year.

Divorce.—May be granted: (1) when either has a husband or wife living; (2) wilful absence for three years; (3) adultery; (4) impotency; (5) extreme cruelty; (6) fraudulent contract; (7) any gross neglect of duty; (8) habitual drunkenness for three years; (9) imprisonment of either in penitentiary under sentence; (10) a divorce got out of the State, which remains binding on the husband or wife in Ohio, and releases party who procured it from obligations of the marriage contract. One year's residence required.

OREGON.

Children born out of wedlock become legitimate by the subsequent marriage of their parents. Marriages, where consent is obtained by force or fraud, can only be set aside by the party imposed upon.

How to Marry.—Marriages may be solemnized by any minister or priest of any church or congregation anywhere within the State, and by any judicial officer of the State anywhere within his jurisdiction. A license must first be procured from the county clerk of the county in which the bride resides, directed to any person or religious organization or congregation authorized by law to solemnize marriage, authorizing such person, organization, or congregation to join together the persons therein named as husband and wife. In Multnomah County the license must be issued by the clerk of the county court. The clerk must enter in the marriage book, before delivering the license, the names of the parties, consent of the parents, the name of the party making the affidavit, and the substance of it, and date. The applicant must first file with the clerk an affidavit of some person other than the applicant, showing the consent of parents or guardian

in case of minors, and any facts that may be necessary to be shown in any particular case, which shall be sufficient authority to the clerk, so far as the facts therein set forth are concerned. The penalty for issuing a license contrary to law is imprisonment not more than one year, or a fine not more than $500 nor less than $100. The bride and groom must produce the license before the ceremony can be performed. No particular form is required, except that the bride and groom shall assent or declare, in the presence of the minister, priest, or judicial officer, and of at least two attending witnesses, that they take each other as husband and wife. The celebrant shall give to each, if required, a certificate specifying their names and residences, the time and place of the marriage, date of license, by whom issued, and the names and addresses of at least two witnesses present; and he must, within one month, return also to the county clerk where the marriage took place, a certificate signed by him, which the clerk must file and record, and the fees therefor must be paid by the party filing it, who shall be entitled to demand it from the bride and groom at the wedding. All marriages to which there is no legal impediment, solemnized before or in any religious organization or congregation, according to the established ritual or form commonly practised therein, are valid; but the certificate must be filed as in other cases. For refusing or neglecting to file or record such certificate, the penalty is a fine of not less that $10 nor more than $50 for every five days of such neglect or refusal.

A person attempting to join others in marriage, knowing he has no right to do so, or contrary to law, shall be imprisoned not more than one year, or fined not more than $500, nor less than $100.

A marriage solemnized before any person pretending to be priest, minister, or officer, shall not be declared void, if the bride and groom, or one of them, acted in good faith.

Marriage of Children.—If the bride is under fifteen, or the groom is under eighteen, a marriage license shall not be issued. If the bride is over fifteen and under eighteen, or if

the groom is over eighteen and under twenty-one, a license shall not issue without the written consent of the parent or guardian, if there be any. But if either of the parties have no parent or guardian residing in the State, and the bride has resided in the county where the license is applied for six months prior to the application, the license, if otherwise proper, may be issued without such consent. Affidavit must be filed, see above. Marriage for want of legal age can only be set aside at the suit of the party under such legal age.

Forbidden Marriages: Relatives; Miscegenation.—Where the bride and groom are nearer of kin than second cousins, whether of the whole or half blood, computing by the rules of the civil law; and where either of the parties is a white person and the other a negro, or a person of one fourth or more negro blood, the marriage is prohibited. The punishment therefor is imprisonment not less than one year, nor more than three years, or in county jail not less than three months, nor more than one year, or by fine not less than $200, nor more than $1,000.

The criminal law of Oregon further declares that it shall not be lawful for any white person, male or female, to intermarry with any negro, Chinese, or any person having one fourth or more, negro, Chinese, or Kanaka blood, or any person having more than one half Indian blood. All such marriages are declared to be absolutely void; and the punishment therefor is imprisonment not less than three months, nor more than one year, and for issuing to such persons a license, or for marrying, or aiding in such marriage, the penalty is the same, and in addition thereto a fine of not less than $100, nor more than $1,000.

Bigamy.—If any person being married, shall marry another, it is bigamy, unless the accused can show that his or her husband or wife has voluntarily withdrawn and remained absent seven years together, the accused not knowing such person to be living within that time; or that the accused has been legally divorced from the prior marriage. The punishment

for bigamy is imprisonment in penitentiary not less than one year, nor more than four years, or in county jail not less than six months, nor more than one year, or fine not less than $300, nor more than $1,000.

Divorce.—May be granted for: (1) impotency; (2) adultery; (3) conviction of felony; (4) habitual gross drunkenness contracted since marriage, continuing two years prior to suit; (5) wilful desertion for one year; (6) cruel and inhuman treatment, or personal indignities rendering life burdensome. One year's residence required.

PENNSYLVANIA.

Pennsylvania statutes declare that all marriages not forbidden by the law of God shall be encouraged. In furtherance of this declaration it is declared that they shall be solemnized by the bride and groom taking each other for husband and wife, and the law makes special provision for parties marrying themselves, if they so desire. The old provisions requiring twelve witnesses, and posting up the intention to marry on the court-house or meeting-house doors a month before the wedding, have become obsolete. A minister or magistrate who marries a couple when either the bride or groom is intoxicated, shall be guilty of a misdemeanor, and pay a fine of $50, and be imprisoned not exceeding sixty days. Children born out of wedlock, whose parents subsequently marry, thereby become legitimate.

How to Marry.—Marriage may be celebrated by any minister of the gospel, judge, justice of the peace, or alderman, or the bride and groom may join themselves in marriage, but in every case a license must be obtained from the clerk of the Orphans' Court in the county where the wedding takes place, and the legal fee for such license is fifty cents. If the parties desire to be married by a minister or magistrate, the license must be duly numbered, with the blanks filled out in the form prescribed by the statute.

Appended to the license shall be two certificates numbered to correspond, one marked original, the other duplicate, in the form prescribed by the statute.

The person solemnizing the marriage must deliver the certificate marked "original" to the bride and groom, and he must return the "duplicate" within thirty days to the clerk of the Orphans' Court who issued it, who must immediately enter it upon the marriage-license docket.

If the parties desire to marry themselves, they must first get from the Orphans' Court a declaration of their right to do so, which when filled out will be in the following form :

To Clifford Stanhope and Emily Thankful :

Legal evidence having been furnished to me, that in accordance with the Act of Assembly, approved the 23d day of June, one thousand eight hundred and eighty-five, this certifies that I am satisfied that there is no legal impediment to you joining yourselves in marriage.

ARTHUR EDGEWORTH, *Clerk.*

To such declaration two certificates, an "original" and "duplicate," shall be appended, in the following form :

We hereby certify that on the 10th day of June, one thousand eight hundred and , we united ourselves in marriage at Point View, in the County of Blair, having first obtained from the clerk of the Orphans' Court of said county a declaration that he was satisfied that there was no existing legal impediment to our so doing.

CLIFFORD STANHOPE.
EMILY THANKFUL.

We, the undersigned, were present at the solemnization of the marriage of Clifford Stanhope and Emily Thankful as set forth in the foregoing certificate.

GEORGE WHITE.
JUBEL SOMERSET.

This certificate must be filed within thirty days by the bride and groom in the office of the clerk of the Orphan's Court.

Any bride and groom, or any minister, magistrate, or alderman who neglects to return the certificate to the clerk as above

required shall forfeit and pay the sum of $50, and the clerk for neglect or refusal to record the same without additional fee shall forfeit and pay the sum of $50.

A person who solemnizes a marriage, or a witness who attests a marriage where the parties have not procured a license, shall forfeit and pay $100; but the marriage will be valid.

The clerk shall inquire of the parties applying for a license, either separately or together, under oath or affirmation, relative to the legality of the contemplated marriage; and if there be no legal objection thereto, then he shall grant such license. Or the parties may go, either separately or together, before any magistrate, alderman, or justice of the peace of the township, ward, or county where either resides, in the county where the license is desired, and be inquired of touching the legality of the contemplated marriage, and such inquiries and answers having been subscribed and sworn to by the parties before such officer, and forwarded to the clerk of the Orphans' Court, who, if satisfied that the same is genuine, and that no legal objection exists to the contemplated marriage, shall issue a license. The clerks must furnish the officers proper blanks for this purpose, at the cost of the county. The fee for taking such affidavit is fifty cents. For issuing a license contrary to law, or making a false return, the penalty is by fine not exceeding $1,000.

Marriage of Children.—Children and all persons under the age of twenty-one are not entitled to receive a marriage certificate, unless the consent of the parents or guardians shall be personally given before said clerk, or certified in writing, attested by two adult witnesses. The signature of the parent or guardian shall be acknowledged before a notary public, or other officer competent to take acknowledgments, and must form part of the record for issuing the license, and for filing which the clerk is entitled to fifty cents additional fee.

For issuing a license contrary to law, or for making a false return to the clerk, the penalty is a forfeiture not exceeding

$1,000 to the use of the party aggrieved. It does not necessarily follow, however, that the marriage of children over fourteen are void absolutely.

Forbidden Marriages: Relatives.—If any person shall intermarry within the degrees of consanguinity or affinity according to the following table (established by law), he or she shall on conviction be sentenced to pay a fine not exceeding $500, and to undergo an imprisonment, by separate or solitary confinement at labor, not exceeding three years; and all such marriages are declared void. The table is as follows:

DEGREES OF CONSANGUINITY.

A man may not marry his mother.
" " " " " father's sister.
" " " " " mother's sister.
" " " " " sister.
" " " " " daughter.
" " " " the daughter of his son or daughter.

A woman may not marry her corresponding relatives.

DEGREES OF AFFINITY.

A man may not marry his father's wife.
" " " " " son's wife.
" " " " " son's daughter.
" " " " " wife's daughter.
" " " " the daughter of his wife's son or daughter.

A woman may not marry her corresponding relatives.

Bigamy.—If any person shall have two wives or two husbands at the same time, he or she shall be guilty of a misdemeanor, and on conviction be sentenced to pay a fine not exceeding $1,000, and to undergo an imprisonment, by separate and solitary confinement at labor, not exceeding two years; and the second marriage shall be void: *Provided*, That if any husband or wife upon any false rumor, in appearance well founded, of the death of the other (when such other has been absent for two whole years) hath married, or shall marry again, he or she shall not be liable to the penalties of fine and imprisonment imposed by said statute.

An unmarried person who knowingly marries the husband or wife of another, on conviction must pay $500 fine, and be imprisoned not exceeding two years.

Divorce.—May be granted: (1) where marriage is void by reason of existing marriage; (2) where parties are within prohibited degrees of consanguinity or affinity; for (3) natural impotence; (4) adultery and cruel and barbarous treatment; (5) wilful desertion for two years, or where either party has been convicted of felony and sentenced for a term exceeding two years; (6) where marriage has been procured by force, fraud, or coercion, and has not been confirmed by acts of injured party. Divorce from bed and board may be granted to wife who has been turned out, abandoned, or cruelly and barbarously treated so as to endanger her life, or where she has suffered such indignities as to render her life intolerable, and force her to withdraw from his house and family; and where husband has been guilty of adultery. One year's residence required.

RHODE ISLAND.

In Rhode Island a marriage may be stopped by any person who chooses to object thereto in writing, and hand it to the celebrant, who is not allowed to proceed with the ceremony until such lawful objection be removed, without incurring the penalty of imprisonment not exceeding six months, or fine not exceeding $1,000. All marriages where either party is an idiot or lunatic is absolutely void.

How to Marry.—The marriage ceremony may be performed by any ordained minister or elder of any religious denomination domiciled in Rhode Island, or any justice of the Supreme Court. It seems that a religious society within the meaning of the law must be incorporated, and sustain a minister publicly ordained, and must hold stated and regular service. Wardens of the town of New Soreham may join persons in marriage in that town. Quaker marriages, or marriages among persons professing the Jewish religion, performed ac-

cording to their customs, are valid. Marriages must be solemnized in the presence of at least two witnesses besides the person officiating.

Before parties wed they, or one of them, must sign and deliver to the town clerk of the town or city where such person resides ; or, if living in Providence, to the registrar of births and marriages ; or, if they are non-residents, to the town or city clerk or registrar where the marriage takes place, a certificate specifying the names, surnames, ages, color, occupation, birthplace of each ; whether married before ; whether the marriage intended is the first, second, third, or other marriage ; whether the condition of the person is that of a divorced person, or widow, or widower ; and the names, occupation, and birthplace of each of their parents. For failure to deliver the same the penalty is imprisonment not exceeding six months, or fine not exceeding $1,000. Such clerk or registrar shall issue a certificate properly signed, witnessed, certified by him, setting forth these facts, which must be delivered to the person performing the ceremony. The fee for the certificate is twenty-five cents. And no person shall wed any to whom such certificate has not been issued. The celebrant or the Meeting of Friends must certify upon such certificate the time and place of the marriage, and return all certificates on the second Monday of every month to the clerk or registrar of the town or city where the wedding was performed. Whoever celebrates a marriage knowing that one of the parties has a husband or wife living, or that such person has not been lawfully divorced, or where the marriage has been objected to in writing as above set forth, shall incur the penalty there stated. Whoever marries any persons without following the requirements of the law shall be fined not exceeding $50.

Marriage of Children.—No clerk or registrar is allowed to issue a marriage certificate to any minor person under guardianship, unless the consent in writing of the parent or guardian shall have first been obtained ; and such clerk or registrar shall have power to administer an oath relative thereto. But

where the bride is over eighteen, and has no parent or guardian in the United States, the certificate may issue without such consent.

Forbidden Marriages: Relatives.—No man shall marry his mother, grandmother, daughter, son's daughter, daughter's daughter, step-mother, grandfather's wife, son's wife, son's son's wife, daughter's son's wife, wife's mother, wife's grandmother, wife's daughter, wife's son's daughter, wife's daughter's daughter, sister, brother's daughter, sister's daughter, father's sister, mother's sister. No woman shall marry her corresponding relatives. Such marriages are void, and the penalty is imprisonment not exceeding twenty years nor less than five years. The issue of such marriages are illegitimate. But these prohibitions are declared not to extend to Jews, who may marry within the degrees of affinity or consanguinity allowed by their religion.

Bigamy.—Every person having a husband or wife living who shall marry another is guilty of bigamy, unless the accused can show either that such husband or wife has been continually absent without the State of Rhode Island for seven years together, the accused not knowing such party to be living within that time ; or that he or she was divorced at the time of the second marriage ; or that such prior marriage was entered into when the groom was under fourteen, or the bride was under twelve years of age. The penalty for bigamy is imprisonment not exceeding five years nor less than one year, or by fine not exceeding $1,000.

Divorce.—Absolute divorce or separate maintenance may be granted : (1) where marriage is void or voidable ; (2) where party deemed civilly dead owing to conviction for crime (convicted of murder or arson) ; (3) where a party will be presumed to be dead by reason of absence or other circumstances ; (4) impotency ; (5) adultery ; (6) extreme cruelty ; (7) wilful desertion for five years (or for a shorter period in the discretion of the court) ; (8) continued drunkenness ; (9) neglect or refusal of husband, being of sufficient ability, to provide for

wife ; (10) other gross behavior and wickedness repugnant to and in violation of the marriage covenant. Petitioner must have been a domiciled inhabitant one year.

SOUTH CAROLINA.

In South Carolina all persons except idiots and lunatics, and those related as set forth below, or prohibited on account of race, or by reason of bigamy, may lawfully contract matrimony.

How to Marry.—The statutes are silent on many points respecting marriage, and prescribe no form or mode of celebrating it. It is regarded in law as merely a civil contract, which the parties may make themselves, with or without the presence of minister, priest, or magistrate. The highest court in the State thus declares the law : "Marriage, with us, so far as the law is concerned, has ever been regarded as a mere civil contract. Our law prescribes no ceremony. It requires nothing but the agreement of the parties, with an intention that that agreement shall *per se* constitute the marriage. They may express the agreement by parole, they may signify it by whatever ceremony their whim, or their taste, or their religious belief may select ; it is the agreement itself, and not the form in which it is couched, which constitutes the contract. The words used, or the ceremony performed, are mere evidences of a present intention and agreement of the parties."

Marriage of Children.—The statute prescribes no age at which children may consent to marry. Hence the common-law rule will be presumed to prevail, which fixes the age of consent at twelve years in females and fourteen in males. The law, however, declares that whoever shall take away, or cause to be taken away, any maid or woman-child unmarried, being within the age of sixteen years, or shall, against the will or unknowing of or to the father of any such maid or woman-child, if the father be in life, or against the will or unknowing of the mother of any such maid or woman-child (having the custody or governance of such child if the father be dead), by secret letters, messengers, or otherwise contract matrimony with any

such maid or woman-child, shall, on conviction, suffer imprisonment for five years, or else shall pay such fine as shall be adjudged by the court. One moiety of such fine shall be for the State and the other moiety to the parties aggrieved.

Forbidden Marriages: Relatives; Miscegenation.—No man shall marry his mother, grandmother, daughter, granddaughter step-mother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, or mother's sister.

No woman shall marry her corresponding relatives.

It shall be unlawful for any man to intermarry with any woman of either the Indian or negro races, or any mulatto, mestizo, or half-breed, or for any white woman to intermarry with any person other than a white man, or for any mulatto, half-breed, negro, Indian, or mestizo to intermarry with a white woman; and any such marriage, or attempted marriage, shall be utterly void and of no effect; and persons so marrying or knowingly officiating at such marriage, are guilty of a misdemeanor, and may be fined not less than $500, or imprisoned not less than twelve months, or both, in the discretion of the court.

Bigamy.—Whoever, being married, and whose husband or wife has not remained continually for seven years beyond the sea, or continually absented himself or herself the one from the other for the space of seven years together, the one of them not knowing the other to be living within that time, or who were not married before the age of consent, or when neither husband nor wife is under sentence of imprisonment for life, or whose marriage has not been by decree of a competent tribunal having jurisdiction both of the cause and the parties, shall marry another person, the former husband or wife being alive, shall, on conviction, be punished by imprisonment in penitentiary not more than five years nor less than six months, or by imprisonment in jail six months and a fine not less than $500. Such marriages shall be void.

Divorce.—Is not sanctioned in South Carolina, and will not be granted in any case after the marriage has been consummated by the parties living together as husband and wife. It has been declared by judicial authority, the Legislature never exercised the power to grant a divorce, and never delegated such power to any court. But if the marriage has not been so consummated, the Court of Common Pleas may declare the contract void for want of consent of either of the contracting parties, or for any other cause going to show that at the time the said supposed contract was made it was not a contract.

SOUTH DAKOTA.

Admitted into the Union by Act of Congress approved the 22d of February, 1889. Now formulating its State constitution. For laws see DAKOTA.

TENNESSEE.

Tennessee has adopted the most unreasonable condition as to the marriage contract to be found within the United States. A few of the States require a nominal bond to be given by the groom, in the penalty in some cases of $200. The amount of the bond in Tennessee is $1,250. This would seem, in the case of the humbler class of citizens unable to procure bondsmen, to operate almost as a denial of the right to marry. Five years of absence, where the parties are not known to be living, dissolves the marriage, in view of a second marriage.

How to Marry.—All regular ministers of the gospel of every denomination, and Jewish rabbis, having the care of souls, and all justices of the peace, judges, and chancellors in the State may solemnize the rite of matrimony. No formula need be observed, except that the parties shall respectively declare, in the presence of the minister or officer, that they accept each other as man and wife. The bride and groom must first produce a license under the hand of the clerk of the county court where the bride resides, or where the marriage is solemnized,

directed to such minister or officer, authorizing the solemnization of a marriage between them. Unless the clerk knows that one of the parties is incapable, he may issue a license, first taking a bond to the State, with sufficient surety, in the sum of $1,250, conditioned that there is no lawful cause to obstruct the marriage. The celebrant shall, at the foot or on the back of each license, affix a certificate in the following form, to be signed by him :

"I solemnized the rite of matrimony between the above (or within) named parties, on the —— day of ——, 18—."

He must fill out the blank and return it to the clerk of the county within six months. The fact that the baptismal name has been omitted from the license, and a nickname used, will not invalidate the marriage when duly consummated. The penalty for granting a license to persons incapable, or joining such persons in marriage, knowingly, is a fine of $500.

Marriage of Children.—The statute is silent as to the marriage of children, and fixes no age of legal consent. The common-law rule would perhaps prevail, in the absence of legislation on the subject, which fixes the age of consent at twelve in males and fourteen in females. Doubtless, in view of the heavy penalty, no license would be granted to a minor without the written consent of the parent or guardian.

Forbidden Marriages: Relatives; Miscegenation.—Marriage cannot be contracted with a lineal ancestor or descendant, nor the lineal ancestor or descendant of either parent, nor the child of a grandparent, nor the lineal descendant of husband or wife, as the case may be, nor the husband or wife of a parent, or lineal descendant. The punishment for such an offence is imprisonment not less than five nor more than twenty-one years.

The intermarriage of white persons with negroes, mulattoes, or persons of mixed blood descended from a negro to the third generation, inclusive, or their living together as man and wife in Tennessee, is prohibited. The punishment is imprisonment not less than one nor more than five years. But the

court may, on recommendation of the jury, substitute in lieu of imprisonment in the penitentiary, fine and imprisonment in the county jail.

Bigamy.—If any person, being married, shall marry another, it is bigamy, unless the accused can show that his or her husband or wife has continually remained beyond the limits of the United States, or absent from the other without the knowledge of the party remarrying, for the space of five years together, or that the accused had good reason to believe such former husband or wife to be dead. The punishment is imprisonment not less than two nor more than twenty-one years.

Divorce.—Absolute divorce may be granted: (1) where either party at time of marriage was impotent, and incapable of procreation; (2) where either has knowingly married in violation of a previous marriage still subsisting; (3) adultery; (4) wilful or malicious desertion, or absence of either for two years without reasonable cause; (5) conviction of crime rendering party infamous under laws of Tennessee; (6) conviction of felony, and sentence to penitentiary; (7) when either party has attempted the life of the other by poison or other means showing malice; (8) refusal of wife to remove to Tennessee with husband without reasonable cause, and wilfully absenting herself from him for two years; (9) pregnancy at time of marriage without husband's knowledge; (10) habitual drunkenness, when habit was contracted after marriage. Divorce from bed and board, or from bonds of matrimony in discretion of court, may be granted for: (1) cruel and inhuman treatment by husband towards wife, which renders it unsafe and improper for her to cohabit with him, and be under his dominion and control; (2) that he has offered indignities to her person, which render her condition intolerable, and forced her to withdraw; (3) that he has abandoned her, and turned her out-of-doors, and refused and neglected to provide for her.

When the marriage is absolutely annulled the parties may marry again; but a defendant who has been guilty of adultery

shall not marry the person with whom the crime was committed, during the life of the innocent party. The courts have recently refused to recognize the marriage of a guilty divorced person, though solemnized in Alabama. Two years' residence required.

TEXAS.

Every female under the age of twenty-one years who shall marry in accordance with the laws of Texas shall, from and after the time of such marriage, be deemed to be of full age, and shall have all the rights and privileges to which she would have been entitled had she been, at the time of her marriage, of full age.

Abduction is the false imprisonment of a woman with intent to force her into marriage, or for immoral purposes. If the female is under fourteen it is not material whether she consents or not. (See Marriage of Children.)

How to Marry.—All regularly licensed or ordained ministers of the gospel, judges of the district and county courts, and all justices of the peace of the several counties are authorized to celebrate the rites of matrimony between all persons legally authorized to marry. The person desirous of marrying shall apply to the clerk of the county court, and shall receive from him a license directed to all persons authorized by law to celebrate the rites of matrimony, which shall be sufficient authority for any one of such persons to celebrate such marriage. The clerk shall record all licenses so issued by him, and the person solemnizing the marriage must endorse the same on the license and return it to the clerk within sixty days, which return shall also be recorded.

Marriage of Children.—The statute specifically declares that males under sixteen and females under fourteen shall not marry. No clerk shall issue a license without the consent of the parents or guardians of the parties applying, unless such parties shall be, in the case of the male, twenty-one, and in the female eighteen.

If a female under fourteen be taken, for the purpose of marriage, from her parent, guardian, or other person having the legal charge of her, it is abduction, whether she consents or not, and although a marriage afterwards takes place between the parties ; and the offence is complete if the female be detained as long as twelve hours, though she may afterwards be relieved from such detention, without marriage or immorality. The punishment for abduction is by fine not exceeding $2,000 ; but if by reason of such abduction the woman be forced into marriage, the punishment shall be by confinement in penitentiary not less than two nor more than five years ; and if immorality has been practised the imprisonment is not less than three nor more than twenty years.

Forbidden Marriages: Relatives; Miscegenation.—No man shall marry his mother, his father's sister or half-sister, his mother's sister or half-sister, his daughter, the daughter of his father, mother, brother, or sister, or of his half-brother or sister, the daughter of his son or daughter, his father's widow, his son's widow, his wife's daughter, or the daughter of his wife's son or daughter. No woman shall marry her corresponding relatives.

The punishment for such marriages is imprisonment in the penitentiary not less than two nor more than ten years.

It shall not be lawful for any person of European blood or their descendants to intermarry with Africans or the descendants of Africans ; and such marriages shall be void. If any white person and negro shall knowingly intermarry in Texas, or elsewhere, and thereafter live in Texas, they shall be imprisoned not less than two nor more than five years. The term "negro" includes a person of mixed blood descended from negro ancestry to the third generation inclusive, although one ancestor of each generation may have been a white person. All persons not included in the above definition of negro are deemed in law white persons.

Bigamy.—If any person having a husband or wife living shall marry another it is bigamy, unless the accused can show

that his or her husband or wife shall have been continually remaining out of the State, or shall have voluntarily withdrawn from the other and remained absent for five years, the person marrying again not knowing the other to be living within that time, or that he or she has been legally divorced from the bonds of matrimony. The punishment is imprisonment in the penitentiary not exceeding three years.

Divorce—May be granted husband or wife: (1) where either is guilty of excesses, cruel treatment, or outrages towards the other of such a nature as to render living together insupportable; (2) conviction of felony after marriage, one year's imprisonment dating from final judgment without pardon, where the conviction was not upon the testimony of the husband or wife. In favor of husband (1) where wife is taken in adultery, or (2) where she has voluntarily left husband for three years with intention of abandonment. In favor of wife (1) where husband has left her for three years with intention of abandonment, or (2) where he shall have abandoned her and lived in adultery with another woman. Petitioner must be *bona-fide* resident, and must have lived six months in county where suit is brought.

UTAH.

Forced by federal legislation from time to time since 1862, and Congress having finally dissolved the religious corporation known as the Mormon Church, the modern advocate and propagator of polygamy, Utah has at last, in 1888, placed upon her statute-books vigorous laws with regard to the government of the marriage relation. Since the Mormon Church has been extinguished, at least so far as its corporate existence is concerned, it is fair to presume that these laws will not continue to remain a dead letter. They contain the following provisions:

The period of minority extends in males to the age of twenty-one, and in females to eighteen; but all minors obtain their majority by marriage. Stirring up unwarrantable litigation

between husband and wife, or seeking to bring about a separation between them, is made punishable by fine and imprisonment.

Every person who falsely personates another, and in such assumed character marries or pretends to marry or sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony. A felony is punishable by imprisonment in the penitentiary not exceeding five years.

Marriages solemnized out of Utah, if valid where solemnized, are declared to be valid in Utah.

Marriage is prohibited and declared void: (1) with an idiot or lunatic; (2) when there is a husband or wife living, from whom the person marrying has not been divorced; (3) when not solemnized by an authorized person, except where consummated by the parties, or one of them, in good faith; (4) when at the time of marriage the male is under fourteen, or the female under twelve; (5) between a negro or a Mongolian and white person. Where parties marry in good faith, with the belief that a former husband or wife then living was dead, or legally divorced, the issue born or begotten before notice of the mistake shall be legitimate.

How to Marry.—No marriage shall be solemnized without a license, issued by the clerk of Probate Court of county where female resides; but if the female is of full age, or a widow, and she applies in person or in writing over her signature, the clerk of any Probate Court may issue it. When parties are personally unknown, clerk shall issue no license until affidavit is made by applicant, showing there is no lawful reason in the way of such marriage. False swearing by an applicant, or subscribing witness, is perjury. In absence of clerk, or during a vacancy, the license shall be issued by the probate judge. Every clerk, deputy clerk, or probate judge, who shall knowingly issue a license for any prohibited marriage, shall be punished by confinement in penitentiary not exceeding two years, or fined not exceeding $1,000, or both, and expelled

from office by judgment of conviction. If he wilfully issue a license contrary to his duty, he shall be fined not exceeding $1,000. Clerk's fee for license, $1, for recording same when returned, $1.25, which he may demand when issued.

Marriage shall be solemnized by the following persons only: ministers of the gospel, or priests of any denomination, in regular communion with any religious society; probate judges, justices of the peace, and judges of the distict and supreme courts. The celebrant who solemnizes marriage without a license shall be imprisoned not less than one nor more than twelve months, or fined not more than $1,000, or both. He shall return the license to the court whence it issued, within thirty days, with a certificate of the marriage over his signature, giving date and place of celebration, and names of two or more witnesses present, and for failure to do so is guilty of a misdemeanor. A misdemeanor is punishable by imprisonment not exceeding six months, or by fine not less than $300, or by both.[1] The clerk must file, record, and index the return. If a celebrant shall knowingly, with or without a license, solemnize a marriage prohibited by law, he shall be imprisoned not exceeding three years, or fined not exceeding $1,000, or both fined and imprisoned.

A person not authorized, who shall solemnize marriage under pretense of authority, or shall falsely personate the father, mother, or guardian, in obtaining a license, or forge their name to a consent to such marriage, shall be imprisoned not exceeding three years.

Marriage of Children.—Marriage is prohibited between a male under fourteen or a female under twelve, and such marriage is void. Where the male is under sixteen, or the female under fourteen and marries without consent of parents or guardians, and the marriage has not been ratified after that age, by cohabitation, it may be annulled. If the male is under twenty-one, or the female is under eighteen, no license

[1] Compare with provision under the Act of Congress, relating generally to the territories; note foot of page 194.

shall be issued without the consent of parents or guardian, personally or in writing, signed and attested by two or more witnesses, and proved by the oath of one of them administered by the clerk. For issuing a license to such contrary to law, or contrary to the duty imposed, or solemnizing such a marriage, the licensing official and celebrant incur the penalties above set forth.

Forbidden Marriages: Relatives; Miscegenation.—Marriage between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, or between any persons related to each other within and not including the fourth degree of consanguinity, computed according to the rules of civil law, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate. Punishment for incest is imprisonment in penitentiary not less than three nor more than fifteen years.[1]

Marriage between a white person and a negro or Mongolian, is void.

Bigamy.—Every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which it has exclusive jurisdiction, shall be adjudged guilty of bigamy; unless it can be shown that such former husband or wife shall have been absent five consecutive years, without being known to the accused to be living within that time [and belief that such absentee is dead.—Edmunds law.], or that such former marriage has been dissolved, annulled, or pronounced void, by decree of a competent court. [This Act of Congress, except the clause in brackets, has been in force since July 8, 1862.]

The Edmunds law, in force since March 22, 1882, re-enacted the law of 1862, adding that any man who, simul-

[1] This penalty being prescribed by the Act of Congress, known as the Edmunds-Tucker law, which went into effect March 3, 1887, would seem to apply to all the Territories of the United States.

taneously, or on the same day, marries one or more than one woman, is guilty of polygamy. It made legitimate the issue of Mormon marriages born before January 1, 1883, and disfranchised polygamists.

The Edmunds–Tucker law, which took effect March 3, 1887, permits husband or wife of lawful marriage to testify in prosecutions for bigamy or polygamy, and makes adultery punishable by imprisonment in penitentiary not exceeding three years, and dissolves the corporation known as the Mormon Church, or the Church of Jesus Christ of Latter-Day Saints, and the General Assembly of the State of Deseret, thus striking a blow at a corrupting fountain, which has been breeding moral pestilence for two generations.

The punishment for bigamy, or polygamy, under the Edmunds law, is imprisonment not exceeding five years, and fine not exceeding $500.

Divorce.—May be granted to either husband or wife for: (1) impotency at time of marriage; (2) adultery; (3) wilful desertion for more than one year; (4) wilful neglect of husband to provide for wife common necessaries of life; (5) habitual drunkenness; (6) conviction of felony; (7) cruel treatment to extent of causing plaintiff great bodily injury, or great mental distress. If it appears to the court that a compromise might be made between the parties, he may defer the decree of divorce to a specified time not exceeding one year. One year's residence is required.

VERMONT.

Children born out of wedlock, whose parents subsequently marry, if recognized thereafter by the father, shall be considered legitimate.

How to Marry.—Marriage may be solemnized by a justice in his county, or by an ordained minister who resides in the State, or who labors statedly therein as minister or missionary. Marriage among Quakers may be solemnized in the manner used in their society. Before solemnizing a marriage the min-

ister or magistrate must require of the bride and groom a certificate, issued by the town-clerk of the town where the groom resides, or if he is not a resident, then of the town where the bride resides, or if both are non-residents, then of the town where the wedding is to be ; and this certificate renders immunity from further responsibility. The marriage certificate to be issued by the clerk, for which he is entitled to a fee of fifty cents, shall be in the form prescribed by the statute, the clerk being required to fill out the blanks as far as practicable, and when it is returned by celebrant he shall complete the record.

If a person making application for a certificate makes any material misrepresentation in filling the blanks therein, such person may be fined not more than $100.

For cases when clerk is forbidden to issue certificate, see Marriage of Children. The celebrant shall fill all remaining blanks, add the date of the marriage and official signature, and return the certificate to the office whence it issued within ten days, or be subject to a fine of not less than $10 ; and for performing a marriage, without obtaining a license, he will be subject to the same penalty.

If a person undertakes to join others in marriage, knowing he has no legal right to do so, he shall be imprisoned not more than six months, or fined not less than $100. But no marriage solemnized before a person professing or pretending to be a minister or magistrate shall be void, if the bride and groom or one of them acted in good faith.

Marriage of Children.—The town-clerk shall not issue a marriage certificate to a minor without the consent in writing of the parent or guardian, if there is one competent to act ; nor when either the proposed bride or groom is insane, or under guardianship, without the written consent of the guardian of such party ; nor to a town pauper, without written consent of the selectmen of the town liable for his support.

Forbidden Marriages: Relatives. — No man shall marry his mother, grandmother, step-mother, daughter, grand-

daughter, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister. No woman shall marry her corresponding relatives. If the relationship is founded on marriage, the prohibition continues after the dissolution of the marriage by death or divorce, unless it has been declared void for a cause which rendered it originally unlawful. Such marriages are void without decree, and the penalty therefor is imprisonment not exceeding five years, and fine not exceeding $1,000, or either of said punishments.

Bigamy.—If a person, having a husband or wife living, marries another, it is bigamy, unless the accused can show that his or her husband or wife has been continually beyond sea or out of the State for seven years together, the accused not knowing such person to be living within that time ; or that such former marriage has been avoided by divorce or sentence of nullity, or was contracted under the age of consent and not afterwards assented to. The punishment is imprisonment not exceeding five years. A person sentenced to confinement at hard labor during life, in the State prison, shall be considered as dead, so far as relates to his marriage.

Divorce.—May be granted for : (1) adultery ; (2) sentence to State prison for life, or for three years or more ; (3) intolerable severity ; (4) wilful desertion for three consecutive years, or when party has been absent and not heard from for seven years. Wife also is entitled to divorce when husband without cause grossly or wantonly and cruelly refuses and neglects to maintain her, being of sufficient ability to do so, whether his means are derived from the income of property, personal labor, or any other source. No divorce granted to parties who never lived as husband and wife in the State ; nor where cause arose out of State, unless parties previously lived together in the State, or one of them lived there at the time when cause arose. Two years' residence required when cause arose out of State ; in other cases, one

year. The State's attorney, in the respective counties, must appear in behalf of the State in all divorce cases. Guilty party cannot marry any person other than the complainant until the expiration of three years after divorce, unless within that time innocent party dies. Violation of the prohibition, or living in the State in violation thereof, is punishable by imprisonment not less than one nor more than five years.

VIRGINIA.

The code of Virginia, which went into effect in May, 1888, seems to have modified the rule in cases where children of the age of twelve and under fourteen marry without consent of parents, authorizing a receiver of her property. The law now, in all cases where the bride is a minor at the time of her marriage, authorizes a receiver of her separate estate during minority. The bond required of a celebrant has been reduced from $1,500 to $500. Children born out of wedlock, whose parents subsequently marry, if recognized by the father before or after marriage, shall be deemed legitimate. The issue of marriages deemed null and void, or dissolved by divorce, are legitimate.

A person who takes away or detains, against her will, any female, with intent to marry her, or cause her to be married, may be imprisoned not less than three nor more than ten years; but the force of this provision is weakened by providing that, if the parties subsequently marry, the fact of the marriage may be pleaded in bar of a conviction.

How to Marry.—Every marriage shall be under license, which must be issued by the clerk of the court of the county or corporation where the bride usually resides; or, if the office of clerk be vacant, by the judge of the county court of such county, or the mayor of such corporation, who shall make return thereof to the clerk as soon as there be one; but if the bride lives within the limits of a city or town having a corporation or hustings court, the clerk of such court shall issue the license. At the time of issuing it the clerk must require from

the party a certificate setting forth, as near as may be, the date and place of the proposed marriage, full names of bride and groom, their ages, and whether single or widowed, place of birth, residence, names of respective parents, and occupation of groom. Every license shall be registered in the "Register of Marriages."

Marriage may be celebrated by such ministers as shall produce proof before the court of any county or corporation that he is in regular communion with his religious society, and give bond in penalty of $500, whereupon the court may make an order authorizing such minister to celebrate marriages. The court, if it deems it expedient, may also authorize one or more persons to celebrate marriage within such county, or a particular district thereof, upon giving such bond as is required of an ordained minister. Marriages between persons belonging to any religious society which has no ordained minister, may be solemnized by the persons, and in the manner prescribed by and practised in such society.

No marriage solemnized by a person professing or pretending to be authorized to solemnize the same, shall be void, if the bride and groom, or one of them, acted in good faith, if the marriage is in other respects lawful. Every minister, or clerk of a religious meeting, or other person solemnizing marriage, must make a record of it, and state whether the parties are white or colored, and must, within two months, return a copy thereof signed by him to the clerk who issued the license. For failure to do so the party shall forfeit his bond. The clerk shall file such return, and record a full abstract thereof in his register, set out in tabular form, and indexed. Residents marrying out of the State must send an affidavit to the clerk of the county court or corporation where the husband resides; or, if he is a non-resident, then where the wife resides, an abstract of which must in like manner be recorded. A clerk, minister, or other person who knowingly makes a false record shall be fined not less than $100, nor more than $500. Any person making a false statement, or giving false information,

shall be fined not less than $50, nor more than $100. For issuing a license contrary to law, or performing marriage without a license, the penalty is imprisonment not more than one year, and fine not exceeding $500.

Marriage of Children.—The age of consent is fourteen in males and twelve in females. If the bride or groom is under twenty-one, and has not been previously married, the consent of the father or guardian, or, if there be none, of the mother, shall be given to the clerk personally, or in a writing; if in writing it must be subscribed by a witness, who shall make oath that the same was signed or acknowledged in his presence. If the bride is a minor at the time of her marriage her separate estate may be committed to a receiver, who shall pay her the income only to her separate use, until she attains her majority.

Forbidden Marriages: Relatives; Miscegenation.—No man shall marry his mother, grandmother, step-mother, sister, daughter, granddaughter, half-sister, aunt, son's widow, wife's daughter, or her granddaughter or step-daughter, brother's daughter, or sister's daughter.

No woman shall marry her corresponding relatives.

If the relationship in any case is founded on marriage, the prohibition continues after the marriage is dissolved by death or divorce, unless the divorce be for causes which rendered the marriage originally unlawful or void. The penalty for such unlawful marriages is imprisonment not more than six months, or fine not exceeding $500, in the discretion of the jury.

Marriages which have been solemnized with a brother's widow, or the widow of a brother's or sister's son, or an uncle's widow are, however, declared valid.

A white person who shall intermarry with a colored person, or a colored person who shall intermarry with a white person, shall be confined in penitentiary not less than two nor more than five years. Whoever performs the ceremony shall forfeit $200, informer to have one half. Every person having one fourth or more negro blood shall be deemed a colored person.

Bigamy.—A person, being married, who marries another, in or out of the State, is guilty of bigamy, unless the accused can show that his or her former husband or wife has been continually absent seven years and not known to the accused to be living within that time, or that he or she has been divorced, or that such former marriage has been declared void by a competent court. The penalty for bigamy is imprisonment not less than three nor more than eight years.

Divorce.—May be decreed: (1) where parties are within prohibited degrees of consanguinity or affinity; (2) for adultery; (3) natural or incurable impotency existing at time of marriage; (4) where either was insane at time of marriage; (5) where either is sentenced to confinement in penitentiary; (6) where either was, prior to marriage, without knowledge of the other convicted of an infamous offense; (7) where either charged with an offense punishable with death or confinement in penitentiary has been indicted, is a fugitive from justice, and has been absent for two years; (8) wilful abandonment for five years; (9) where, at time of marriage, wife was pregnant by another without knowledge of husband, or had been a prostitute without his knowledge. No divorce will be granted where parties cohabit after knowledge of such conviction of infamous offense, or of the fact of such pregnancy or prostitution. Divorce from bed and board may be decreed for cruelty, reasonable apprehension of bodily hurt, abandonment, or desertion.

WASHINGTON.

By Act of Congress, approved on the 22d of February, 1889, Washington Territory was admitted into the Federal Union. The constitution for this new commonwealth is now being perfected. The law of the Territory, which it is fair to presume will be the law of the State, is as follows:

WASHINGTON TERRITORY.

Marriage is declared to be a civil contract, which may be entered into by males of the age of twenty-one, and females of

the age of eighteen, not nearer of kin than second cousins, who are otherwise capable. But no marriage, save those of relatives, is void, but in case of want of legal age, sufficient understanding, force or fraud, the party laboring under the disability only, is allowed to bring suit to annul it. Children born out of wedlock become legitimate by the subsequent marriage of their parents.

How to Marry.—Before any persons can wed, they shall procure a license from a county auditor, authorizing any person, or religious organization or congregation, to join the persons therein named as husband and wife. Before the license is issued the applicant shall file with the auditor an affidavit of some credible person, other than the parties seeking the license, showing the facts as to the age of the parties, which shall be sufficient authority, so far as the facts therein stated are concerned, for issuing the license, and pay $1 for recording the certificate. The auditor must, before issuing the license, enter in his register a memorandum of the names of the parties, consent of parents or guardians, if any, name of affiant, and substance of the affidavit and date of issue.

Marriage may be solemnized according to the ritual or ceremonies of any religious denomination, or by any minister or priest of any church or religious denomination, in the Territory, and by any justice or judge of the district or probate court anywhere in the Territory, and by any justice of the peace in his county. No particular form is necessary, except that bride and groom shall assent or declare in presence of the minister or magistrate, and of at least two attending witnesses, that they take each other as husband and wife. The person solemnizing the marriage, or recording the same at a religious meeting, shall give to each of the parties, if required, a certificate thereof, setting out date, names, and also names of at least two witnesses, and, within three months, deliver to the judge of the Probate Court of the county where the wedding took place a certificate, in the form prescribed by statute. The judge of the Probate Court shall fill and record the same ;

and for failure to deliver such certificate, the party shall be fined not less than $25 nor more than $300. Any auditor who issues a license contrary to law, and any person who shall undertake to join persons in marriage without authority, or contrary to law, may be fined not more than $500 nor less than $100. But a marriage solemnized by a person pretending or professing to be a priest or minister, or to have authority, is not void, if the bride and groom acted in good faith.

Marriage of Children.—If the groom is under twenty-one, or if the bride is under eighteen, no license shall be issued without the written consent of the father, mother, or other guardian, and the consent, with other particulars, must be entered by the auditor. But if children marry, the marriage is good, until suit is brought to set it aside, and this can only be done by the person under age.

Forbidden Marriages: Relatives.—Marriage is prohibited where the parties thereto are nearer of kin than second cousins, whether of the whole or half blood, computing by the rules of the civil law. It shall be unlawful for any man to marry his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter; or for a woman to marry her corresponding relatives. The punishment for living together as man and wife by such relatives is imprisonment not more than ten, nor less than one year. Any auditor who issues a marriage license to such relatives may be fined not more than $500 nor less than $100.

Bigamy.—If any person having a former husband or wife living shall marry another, it is bigamy, unless the accused can show that his or her husband or wife has continually remained beyond seas, or has voluntarily withdrawn and remained absent five years, the accused not knowing such person to be living within that time; or that the accused has good reason to believe such husband or wife to be dead; or that the prior marriage has been legally dissolved by divorce. The punish-

ment is imprisonment not more than five years, or fine not exceeding $500 and imprisonment in jail not more than a year. An unmarried person who marries the husband or wife of another is subject to imprisonment not exceeding three years, or fine not more than $300, or imprisonment in jail not exceeding one year.

Divorce.—May be granted: (1) where consent to marriage was contained by fraud or duress, and there has been no subsequent voluntary cohabitation; (2) adultery, on application within one year after knowledge thereof; (3) impotency; (4) abandonment one year; (5) cruel treatment or personal indignities, rendering life burdensome; (6) habitual drunkenness of either, or refusal of husband to make suitable provision for family; (7) imprisonment in penitentiary, on application during term; (8) any cause deemed by the court sufficient, when satisfied that the parties can no longer live together. In case of incurable chronic mania or dementia for ten years or more, court may grant divorce in its discretion.

WEST VIRGINIA.

Ministers in West Virginia must be licensed to celebrate marriages, and must give bonds to the county clerk in the penalty of $1,500. Girls, over twelve and under fourteen, who marry without parents' consent, may have a receiver of their property appointed. Children born out of wedlock, whose parents subsequently marry, if recognized by the father before or after the marriage, shall be deemed legitimate. The issue of marriages deemed null and void, or dissolved by divorce, are nevertheless legitimate. If a person takes away or detains against her will any female with intent to marry her, or cause her to be married, he shall be imprisoned not less than three nor more than ten years.

How to Marry.—Every marriage shall be under license, which must be issued by the county clerk of the county where the bride usually resides, and shall be recorded in the register

of marriages. The clerk must ascertain and record the full names of the bride and groom, their respective ages, places of birth and residence. The license shall be in the form prescribed by the statute.

Marriages must be celebrated by a minister of the gospel in regular communion with his church. He must produce proof that he is duly licensed as such, and in communion with his church, before the circuit or county court of any county, or to the clerk of the county court, when neither of such courts are in session, and give bond in the penalty of $1,500, and the court or clerk shall then make an order authorizing him to celebrate the rites of marriage in all the counties of the State. No other person is authorized to officiate. But marriage between persons belonging to any religious society which has no licensed minister may be solemnized in the manner prescribed by the practice of such society.

No marriage solemnized by a person professing or pretending to be authorized to solemnize the same shall be void, if the bride and groom or one of them acted in good faith, if the marriage is in other respects lawful. The groom must pay at least $1 as a marriage fee. The celebrant must within sixty days return the license to the office whence it issued, with an endorsement thereon of the fact, time, and place of the marriage, which must be filed, indexed, and recorded within twenty days thereafter. If the minister fails to do so, he shall forfeit his bond. Residents marrying out of the State must send an affidavit to the county clerk of the county where the husband resides, or if he is a non-resident, then where the wife resides, an abstract of which must in like manner be recorded. A clerk who knowingly issues a license contrary to law, shall be imprisoned not more than one year, or fined not exceeding $500, or both ; and a minister performing the ceremony without license or authority, shall be subject to the same penalty.

Marriage of Children.—If the bride or groom is under twenty-one, and has not been previously married, the consent

of the father or guardian, or, if there be none, of the mother, shall be given personally to the county clerk, or in writing, subscribed by a witness who shall make oath that the same was signed or acknowledged in his presence. If the bride is of the age of twelve and under fourteen, and shall marry without such consent, her estate may be committed by the county court on petition of her next friend to a receiver, who shall pay her the income only until she arrives at the age of twenty-one, and thereafter it may be delivered to her as her sole and separate property.

Forbidden Marriages: Relatives; Miscegenation.—No man shall marry his mother, grandmother, step-mother, sister, daughter, granddaughter, half-sister, aunt, uncle's wife, son's wife, wife's daughter or her granddaughter or step-daughter, brother's daughter, sister's daughter, or wife of his brother's or sister's son.

No woman shall marry her corresponding relatives. If the relationship in any case is founded on marriage, the prohibition continues after the marriage is dissolved by death or divorce, unless the divorce be for cause which rendered the marriage originally unlawful or void. The penalty for such unlawful marriages is imprisonment not exceeding six months, or fine not exceeding $500, or both. Marriage with a brother's widow is declared lawful.

Any white person who shall intermarry with a negro shall be imprisoned not more than a year, and fined not exceeding $100. And whoever performs the ceremony shall be fined not exceeding $200.

Bigamy.—A person being married who marries another, in or out of the State, is guilty of bigamy, unless the accused can show that his or her former wife or husband has been continually absent seven years, and not known by the accused to be living within that time ; or that he or she has been divorced, or that such former marriage has been declared void by a competent court. The penalty for bigamy is imprisonment not less than one nor more than five years.

Divorce.—Absolute divorce may be decreed for : (1) adultery ; (2) natural or incurable impotency existing at time of marriage ; (3) sentence to confinement in penitentiary ; (4) where either without the knowledge of the other has been convicted of an infamous offense prior to the marriage, and did not cohabit after such knowledge ; (5) wilful desertion or abandonment for three years ; (6) where wife was pregnant at time of marriage by another without husband's knowledge, or had been notoriously a prostitute, if they have not cohabited after such knowledge ; (7) where husband without the wife's knowledge had been, prior to the marriage, notoriously a licentious person, and parties did not cohabit after such knowledge. Divorce from bed and board may be decreed for cruel and inhuman treatment, reasonable apprehension of bodily hurt, abandonment, desertion, or where either after marriage becomes a habitual drunkard. After three years, if there has been no reconciliation, court may make divorce absolute. One year's residence required.

WISCONSIN.

Sentence of imprisonment for life dissolves a marriage absolutely without decree, and no pardon will restore the conjugal relation. No insane person or idiot is capable of contracting marriage, but if such person marry one who is able to contract, and the latter knew of the mental infirmity, the person capable of marriage cannot have it dissolved.

Children born out of wedlock, whose parents subsequently marry, and are recognized by the father as his children, thereby become legitimate.

How to Marry.—Marriage may be solemnized by any justice of the peace, or court commissioner in the county in which he is elected or appointed, and throughout the State by any judge of a court of record, and by any ordained minister or priest in regular communion with any religious society, and who continues to be such ; but before ministers or priests are authorized to celebrate marriage they must file a copy of their

credentials of ordination, or other proof of such official character, with the clerk of the Circuit Court of some county, who shall record the same and give a certificate thereof, and the place of record of such credentials shall be endorsed upon each marriage certificate granted by minister or priest, and recorded with the same. Before performing the ceremony the celebrant shall examine at least one of the parties on oath as to the legality of the intended marriage, and shall not solemnize it in any case unless he is satisfied from such examination that there is no legal impediment thereto. No particular form is required, except that the parties shall solemnly declare, in the presence of the celebrant and attending witnesses that they take each other as husband and wife. There shall be at least two witnesses present besides the celebrant. All Quaker marriages, performed in accordance with their customs, shall be valid.

The celebrant shall at once make a record of the marriage in a book containing, as far as can be ascertained, full name, occupation, birthplace and residence of husband, full name of wife previous to marriage, names of parents of bride and groom, their color, time and place where ceremony was performed, and residence of celebrant, and return a certificate thereof within thirty days, duly signed and dated, to the register of deeds of the county where same took place ; and for failure to do so shall forfeit not less than $25 nor more than $100, if suit is brought before same is delivered. The register must file said certificate and record contents in a book properly ruled and indexed, and annually in the month of January make a return thereof to the Secretary of State, who shall file and record same.

The celebrant, if required, shall also give to the bride and groom each a certificate specifying their names and residences, and of at least two of the witnesses present, and time and place of the marriage, and also stating that he had examined on oath one or both of the parties, and found no legal impediment to their marriage, and where the consent of parent or

guardian is required, stating that the same has been duly given.

For failure to examine at least one of the parties on oath as to legality of marriage, and age of bride and groom, or whoever shall perform the ceremony knowing of any legal impediment, or shall make a false certificate, or perform the ceremony knowing he has no right to do so, or shall falsely personate another, or assume any fictitious name in so doing, or the name or office of another, or aid or abet any false or fictitious marriage, shall be imprisoned not more than one years or fined not exceeding $500.

No marriage solemnized before a pretended minister, priest, or magistrate shall be for that reason void, so long as the parties, or one of them, acted in good faith.

Marriage of Children.—When the bride has attained the age of fifteen and the groom eighteen, they are capable of contracting marriage, if otherwise competent. But if the groom is under twenty-one, or the bride under eighteen, and neither has been previously married, the consent in person or in writing of the parent or guardian having the custody of such minor, if he or she have either a parent or guardian living in Wisconsin, shall first be given to the celebrant before such marriage shall take place ; if the consent is in writing, it shall be signed by the parent or guardian, and attested by two witnesses, one of whom shall appear and make oath before the celebrant that he saw such parent or guardian execute the same. For failure to require such written consent of parent or guardian so attested, if such parent or guardian be absent from the ceremony, such celebrant shall be imprisoned not more than one year or fined not exceeding $500.

Forbidden Marriages: Relatives.—No marriage shall be contracted between parties who are nearer of kin than first cousins, computing by the rule of the civil law, whether of the half or of the whole blood ; and any persons so prohibited who shall intermarry shall be imprisoned not more than ten nor less than two years, and such marriage shall be void without judgment or decree.

Bigamy.—No marriage shall be contracted while either of the parties has a husband or wife living. Such second marriage will be polygamy, unless the accused can show that his or her husband or wife shall have continually remained beyond sea, or shall have voluntarily withdrawn from the other, and remained absent seven years, the accused not knowing such person to be living within that time, or that he or she has been divorced from the bonds of matrimony. The punishment for polygamy is imprisonment not more than five nor less than one year, or fine not exceeding $1,000 nor less than $200.

Divorce.—Marriage within prohibited degrees of consanguinity, or where former husband or wife is living, is void absolutely without decree. Divorce absolute may be granted for: (1) adultery; (2) impotency; (3) sentence to imprisonment for three years or more; (4) wilful desertion for one year; (5) cruel and inhuman treatment; (6) where wife shall be given to intoxication; (7) habitual drunkenness for one year prior to commencement of action; (8) voluntary separation for five years. Divorce from bed and board may be granted for: (1) wilful desertion for one year; (2) cruel and inhuman treatment, or where wife shall be given to intoxicants; (3) habitual drunkenness for one year; (4) extreme cruelty of either party. To wife also where husband refuses or neglects to provide for her, being of sufficient ability, or when his conduct is such as to render it unsafe and improper for her to live with him. One year's residence required, except for adultery committed while plaintiff was a resident or marriage was solemnized in the State and plaintiff resided in the State thereafter until commencement of suit, or, where wife is plaintiff, her husband has resided one year in the State.

WYOMING.

Where either party to a marriage is insane or an idiot on the wedding-day, or where either party has a husband or wife living, and marries a second time, or where the bride and

groom are blood relatives and nearer of kin than second cousins, the marriage is absolutely void without decree. Marriages contracted out of the Territory which are valid where contracted are valid in Wyoming. Children born out of wedlock, whose parents subsequently marry, and are thereafter acknowledged by the father, inherit as if legitimate.

How to Marry.—A marriage license in every case must be obtained from the county clerk of the county where the wedding is to take place. The clerk must inquire into the facts upon the testimony of the applicant, or some competent witness, and record the names, ages, and residences of the parties, and whether there is any impediment to the marriage, and also the date of the license.

Marriage may be celebrated by every judge, justice of the peace, and licensed or ordained preacher of the gospel. Members of any religious society may also be joined in marriage according to the rites and customs of such society. No particular form shall be required, except that the bride and groom shall solemnly declare, in the presence of the magistrate or minister and at least two attending witnesses, that they take each other as husband and wife. The person performing the ceremony, or the clerk or keeper of the minutes, or moderator, or person presiding at the religious society shall, within three months, deliver to the county clerk of the county where the wedding took place a certificate containing time and place of marriage, names, ages, and places of residence of the bride and groom, and also of two attending witnesses. He must also, upon request, give such a certificate to each of the parties. The county clerk must record the certificate so returned within one month. [It must be recorded also, pursuant to the act of Congress, in the Probate Court. See note foot of page 194.] Neglect either to return or record such certificate, or for making a false certificate, or joining persons in marriage without authority, is punishable by fine not exceeding $500 or imprisonment not exceeding one year. A marriage solemnized by a person professing or pretending to be a minister or priest shall

not be void for that reason, if the bride or groom or one of them acted in good faith.

Marriage of Children.—The bride must be sixteen and the groom eighteen in order to be able to consent to marriage. But the county clerk is forbidden to issue any marriage certificate to a minor without the consent, either verbal or in writing, of the father, if living, or of the mother, or guardian of the minor. If the consent is in writing, it must be proved by at least one competent witness. In case minors marry, the marriage is good if the parties live together after the age of consent is passed. Such a marriage is voidable only if the parties separate before the age of consent is reached.

Forbidden Marriages: Relatives.—Marriage is prohibited between parents and children, grandparents and grandchildren, brothers and sisters of the half as well as of the whole blood, uncles and nieces, aunts and nephews, and first cousins by blood. The prohibition extends to illegitimate as well as legitimate children and relatives. The punishment is imprisonment not less than one nor exceeding ten years.

Bigamy consists in having two wives or two husbands at the same time, knowing that the former husband or wife is still alive. If the second marriage takes place out of the Territory, the fact that the guilty parties live together in Wyoming is sufficient to constitute the crime. It will be a defence, however, to show that the former husband or wife has remained continually absent for five years together, the accused not knowing such absent person to be living within that time, or to show that the prior marriage has been dissolved by divorce or declared void. The punishment for bigamy is by fine not exceeding $1,000 and imprisonment not exceeding two years.

Divorce—May be granted for: (1) adultery; (2) physical incompetency at time of marriage continued to time of divorce; (3) conviction for felony and imprisonment therefor; (4) wilful desertion for one year; (5) when either has become an habitual drunkard; (6) when either has been guilty of extreme cruelty; (7) when husband for one year has neglected to pro-

vide necessaries, when not the result of poverty, which he could not avoid by ordinary industry ; (8) indignities offered by either as shall render his or her condition intolerable ; (9) when husband become "a vagrant" within meaning of the law ; (10) conviction of felony or infamous crime prior to marriage without knowledge of the other at the time of marriage ; (11) when wife shall have been pregnant at time of marriage by another, without husband's knowledge. Six months' residence required. Parties may testify, but their evidence must be corroborated.

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